

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

TIMOTHY WHITE, )  
 )  
Plaintiff, )  
 )  
vs. ) 3:11-CV-1817-B  
 )  
REGIONAL ADJUSTMENT )  
BUREAU, INC., d/b/a )  
RAB, INC., )  
 )  
Defendant. )

JURY TRIAL - VOLUME 2  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
FEBRUARY 26, 2013

A P P E A R A N C E S

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## TRANSCRIPT OF PROCEEDINGS - VOLUME 2

Pretrial Matters	4
Jury Voir Dire - By The Court	11
Opening Statement by Mr. Radbil	87
Opening Statement by Ms. Malone	93
ROBERT F. WYATT	
Direct Examination By Mr. Radbil	98
Cross-Examination by Ms. Malone	126
Redirect Examination by Mr. Radbil	158
TIMOTHY WHITE	
Direct Examination By Mr. Radbil	169
Cross-Examination by Ms. Malone	191
Redirect Examination by Mr. Radbil	216

## EXHIBITS ADMITTED INTO EVIDENCE

EXHIBIT	DESCRIPTION	OFFERED/ADMITTED
Plaintiff's Exhibit 6 - Preadmitted		7
Plaintiff's Exhibit 7 - Preadmitted		7
Plaintiff's Exhibit 14 - Preadmitted		7
Plaintiff's Exhibit 15 - Preadmitted		7
Plaintiff's Exhibit 17 - Preadmitted (WD)		7
Plaintiff's Exhibit 10		117
*****		
Defendant's Exhibit 1 - Preadmitted		6
Defendant's Exhibit 2		193
Defendant's Exhibit 5		150
Defendant's Exhibit 6 - Preadmitted		6

1 (In open court at 9:42 a.m.)

2 THE COURT: Good morning. Please be  
3 seated.

4 For the record, this is Civil Action  
5 3:11-CV-1817, Timothy White v. Regional Adjustment  
6 Bureau. We are here this morning to begin the trial  
7 in this case. We're going to finish up some  
8 pretrial issues before we get the jury panel up  
9 here, so if you will bear with me just a moment.

10 Let's go ahead and have the parties  
11 introduce themselves for the record. State your  
12 name as attorney and you who represent.

13 MR. RADBIL: My name is Noah Radbil, and I  
14 represent the plaintiff, Dr. Timothy White.

15 THE COURT: Thank you.

16 MS. MALONE: Robbie Malone, and I  
17 represent the defendant, Regional Adjustment Bureau  
18 d/b/a RAB.

19 THE COURT: Who is here with you today?

20 MS. MALONE: This is Robert Wyatt, Your  
21 Honor.

22 THE COURT: Is it White or Wyatt?

23 MS. MALONE: Wyatt.  
24  
25

1           THE COURT: Thank you. That's what I  
2 thought. Please be seated.

3           The first thing I wanted to do is see if  
4 you were able to come to any agreement on any of the  
5 exhibits such that we could preadmit them and  
6 dispense with at least the predicate on some of the  
7 exhibits.

8           Mr. Radbil.

9           MR. RADBIL: Yes, I think we have agreed  
10 on the account notes, which is Plaintiff's Exhibit  
11 6.

12          THE COURT: Let's do this: Go ahead and  
13 give me the numbers of defense exhibits that you  
14 agree to preadmit.

15          MR. RADBIL: Defense? Which is defense?  
16 Which is the accounts --

17          THE COURT: Okay. You agree to admit  
18 Defense Exhibit Number 1. Okay. You will have to  
19 speak up, Mr. Radbil.

20          MR. RADBIL: We will agree to the account  
21 notes, which are 0215.

22          MS. MALONE: That's not my exhibit. I  
23 think she asked you for my exhibits that you  
24 preadmitted.

25          THE COURT: I am looking for defense

1 numbered exhibits that you agree you won't object to  
2 so that I can preadmit them, and I will do the same  
3 with Ms. Malone as to plaintiff's exhibits.

4 MR. RADBIL: What is the defense number  
5 for the November 4, 2011, from Texas Guaranteed?

6 THE COURT: The record isn't going to work  
7 if you all are conferring back and forth like that.

8 MS. MALONE: Your Honor, I don't think  
9 Mr. Radbil has brought my copy of exhibits with him.  
10 If you will oblige me, I brought a spare and I will  
11 give it to him.

12 THE COURT: Okay.

13 MS. MALONE: I think he just doesn't have  
14 them.

15 THE COURT: Okay.

16 MS. MALONE: Here you go.

17 MR. RADBIL: Thank you. Now that I've  
18 been provided a copy --

19 THE COURT: One moment. Mr. Radbil, when  
20 you talk, look up and speak, because it's all on the  
21 record. Okay? It's really hard to hear what you  
22 are saying, but hang on just a moment.

23 So we have Defense Exhibit 1 that you have  
24 agreed to preadmit.

25 MR. RADBIL: Correct. Number 6 we agree

1 to preadmit.

2 THE COURT: Okay.

3 MS. MALONE: Your Honor, we're withdrawing  
4 7 and 8. Those were only in the event that we would  
5 need them, and I don't. So I'm withdrawing 7 and 8  
6 for the defendants.

7 THE COURT: Okay.

8 MR. RADBIL: And Number 5 we had a slight  
9 disagreement about. There were some last-minute  
10 redactions by --

11 THE COURT: Do you agree to preadmit it or  
12 not?

13 MR. RADBIL: Not in the form that it was  
14 presented this morning.

15 THE COURT: Okay. Let's go on, if there  
16 are any others that you agree to preadmit.

17 MR. RADBIL: I believe that's all, Your  
18 Honor.

19 THE COURT: So Defense Exhibit 1 and  
20 Defense Exhibit 6 on agreement by the plaintiff are  
21 preadmitted.

22 (Defendant's Exhibits 1 and 6 admitted.)

23 THE COURT: Ms. Malone, let's hear what  
24 you have to say about defense exhibits.

25 MS. MALONE: The plaintiff's exhibits,

1 Your Honor?

2 THE COURT: Yes, plaintiff's exhibits.

3 MS. MALONE: Okay. We will agree to  
4 preadmit 6, 7, 14, 15 and 17. There are two others,  
5 Your Honor, that we may be able to resolve the issue  
6 on and preadmit those. He's mistaken about the one  
7 I talked to him about this morning. It was not our  
8 Exhibit 5, but it appears as his Exhibit 13, which  
9 is a copy of a contract with Texas Guaranteed  
10 Student Loan. He gave me his exhibits yesterday.

11 THE COURT: Right now what I am interested  
12 in, just to move things along, is what you agree to  
13 preadmit. We obviously aren't going to start the  
14 actual trial. So if you have an agreement on  
15 preadmitted exhibits, let's get those on the record.  
16 Otherwise, if there are others before we start the  
17 trial that you can get a chance to talk about, we  
18 will do that at the time.

19 Were there any others, Ms. Malone?

20 MS. MALONE: The other one was 16, which  
21 Mr. Radbil was supposed to send me a better copy, I  
22 didn't get it. I am still open to preadmitting it  
23 if I get the better copy.

24 THE COURT: Mr. Radbil.

25 MR. RADBIL: We don't have a better copy.

1 I wasn't able to improve the quality of the print.

2 THE COURT: That's not preadmitted, and I  
3 think we have covered that. So let's go ahead and  
4 talk about some other issues with regard to  
5 questions, voir dire questions.

6 Do you have any to submit to the Court,  
7 Mr. Radbil?

8 MR. RADBIL: No, I don't think in this  
9 case anything beyond identity of the parties, if  
10 anybody is familiar or knows them.

11 THE COURT: Just to be clear, because I  
12 told you all that I was going to let you talk to the  
13 jurors to the extent we have some out there that may  
14 have some issues with a case like this, but those  
15 would be follow-up type questions. I don't think  
16 that would be misunderstood. But just in case, I  
17 don't want any statements on the law or attempts to  
18 extract promises from them or statements of what you  
19 expect the evidence will show to the jury.

20 I always instruct the jury when I do allow  
21 individual voir dire for that, but since we're only  
22 going to be doing it question and answer to the jury  
23 individually, I want to make sure that's clear ahead  
24 of time.

25 Okay. Are there any other pretrial



1 matters that the plaintiff has to raise before we  
2 move on, then, to the trial?

3 MR. RADBIL: Yes, Your Honor. We're going  
4 to withdraw our Exhibit 16 -- I'm sorry, our  
5 Exhibit 17, which would be Defendant's Exhibit 2, I  
6 believe.

7 THE COURT: Okay. Anything else?

8 MR. RADBIL: No, Your Honor.

9 THE COURT: Your witnesses are ready and  
10 they are here?

11 MR. RADBIL: Yes. And if the Court would  
12 grant me leave, I think we are going to excuse the  
13 two that we subpoenaed.

14 THE COURT: Okay. But otherwise, you are  
15 ready to get started once we pick the jury?

16 MR. RADBIL: Indeed.

17 THE COURT: Ms. Malone?

18 MS. MALONE: We are ready, Your Honor.

19 THE COURT: Let me make sure I don't have  
20 anything else.

21 The pretrial order has been filed. If you  
22 don't have a copy of it, we can get you one. It's  
23 the same thing you all submitted, it's just signed  
24 and filed at this point, just in case anyone had a  
25 question about that.

1 Have you all had a chance to talk about  
2 jury instructions after we left yesterday?  
3 Mr. Radbil?

4 MR. RADBIL: Unfortunately, no, Your  
5 Honor.

6 THE COURT: I will just ask that you do  
7 that before we adjourn today. I want to make sure  
8 that you all have had a chance to talk about the  
9 jury charge and make sure there is -- at least I  
10 understand where you agree and where you disagree.  
11 All right?

12 MR. RADBIL: Yes, Your Honor.

13 THE COURT: Ms. Malone?

14 MS. MALONE: Nothing, Judge.

15 THE COURT: Okay. We're going to go ahead  
16 and get the jury lists to you if we don't have them  
17 to you already. We're going to go ahead and get the  
18 physical jury up here, if you will turn your seats  
19 around. We will bring the jury in, and they will  
20 start over there. We will show you how they are  
21 numbered. I usually double-check and have them  
22 stand and tell me their names so we are real clear  
23 on corresponding your list as to who is actually  
24 sitting there.

25 Please remember, everyone, to steer clear

1 of the jury; no discussions, even social amenities,  
2 good morning to them in any fashion. Please stay  
3 away from them at all costs.

4 Let's go ahead and get the panel up here  
5 and get our lists, and then we will get started.

6 (Recess taken.)

7 THE COURT: Ladies and gentlemen, let's  
8 bring the jury in.

9 MS. MALONE: Mr. Radbil's witnesses are  
10 sitting out in the hallway. Can he release them?

11 THE COURT: Yes, that's fine; not right  
12 now.

13 (Jury Panel enters courtroom)

14 THE COURT: Ladies and gentlemen, good  
15 morning. I'm Judge Jane Boyle. Welcome to court on  
16 Tuesday morning. Before we go any further with this  
17 jury selection, I want to have you sworn as our jury  
18 panel, if you all would please rise and raise your  
19 right hands while Mr. Reynolds administers the oath.

20 (Jury panel sworn in.)

21 THE COURT: Please be seated. Good  
22 morning. Jury service. You all probably have been  
23 wondering about this for a few weeks, maybe  
24 yesterday even, wondering how this was going to turn  
25 out, where you would end up, would you get on the

1 jury, how long would the case last, so I will answer  
2 those questions for you.

3 First, just right up front, I will tell  
4 you that this is a civil as opposed to a criminal  
5 case. I can't get into the evidence. I will talk  
6 to you a little bit more about it in a few minutes.  
7 I don't expect the case to last longer than this  
8 week. It should be a short case.

9 What we're here for right now -- have any  
10 of you served on a jury before? So you know about  
11 the jury selection part of it.

12 Let me just tell you that your time and  
13 presence here is precious to us. We take that in  
14 consideration, and we will try to make this whole  
15 process as efficient as possible with your time.  
16 All of you put something aside to come down here  
17 today, I know that, so please know that we take that  
18 seriously.

19 The purpose of this part of the trial is  
20 jury selection. It's to determine -- it's the only  
21 time that the jury panel can communicate with us by  
22 asking questions, raising your hands and giving us  
23 some opinions.

24 And the purpose of this process is to make  
25 sure that we have a fair and impartial jury in this

1 case. There will be seven. The whole trial  
2 process, the whole justice system ultimately is  
3 about fairness, a level playing field, making sure  
4 that the judge and the jury and everyone else  
5 connected with this case is objective and fair. We  
6 all come to every situation with a certain amount of  
7 background experiences that could affect and color  
8 the way we look at particular situations.

9 So we start off with that idea as the  
10 driving force, as the objective, so that's why the  
11 questions will be asked. If there's something  
12 personal that you don't want to answer in front of  
13 everyone else, just let me know and we will talk to  
14 you separately outside the presence of the rest of  
15 the jury panel. I do that every time. I expect we  
16 will do it today, as well.

17 Let me start by introducing the  
18 participants to you as the first step towards  
19 determining if any of you know anyone involved in  
20 the case.

21 The name of the case is Timothy White v.  
22 Regional Adjustment Bureau. That's Timothy White v.  
23 Regional Adjustment Bureau. The case involves  
24 allegations regarding debt collection practices.  
25 That's generally what we are talking about here.

1 I'm going to have each of the attorneys  
2 introduce themselves, their firm, and their client,  
3 and I will start with counsel for the plaintiff.

4 Mr. Radbil.

5 MR. RADBIL: Good morning, everyone. My  
6 name is Noah Radbil, and this is my client Timothy  
7 White. I'm with the law firm of Weisberg & Meyers,  
8 LLC.

9 THE COURT: Thank you, Mr. Radbil. Do any  
10 of you know Mr. Radbil, his firm, or Mr. White?  
11 Okay. I take it by your silence that you don't.

12 If you have happen to have some spark of  
13 recognition that comes later, it's not too late  
14 until we put you in the jury box, so please let me  
15 know.

16 Thank you very much, Mr. Radbil. You can  
17 take a seat.

18 Ms. Malone, on the defense side.

19 MS. MALONE: Thank you, Your Honor. My  
20 name is Robbie Malone. And actually I have a small  
21 firm, three lawyers, and my firm's name is Robbie  
22 Malone. And this is my client, Robert Wyatt,  
23 W-Y-A-T-T, which may be a little confusing with  
24 Mr. White's name. Mr. Wyatt is the Director of  
25 Human Resources and also of Compliance for the

1 company, Regional Adjustment Bureau, which is  
2 located in Tennessee.

3 THE COURT: Thank you very much.

4 Ladies and gentlemen, do any of you know  
5 either of these individuals, Ms. Malone, Mr. Wyatt,  
6 or anything about the Regional Adjustment Bureau? I  
7 take it by your silence that you don't.

8 As I have introduced myself to you, my  
9 court reporter in front of me, who is taking  
10 everything down and making the record of these  
11 proceedings, which we have to have in every trial,  
12 is Shawnie Archuleta.

13 As I am talking and as each of you will  
14 talk, she's taking this down in real time. So if  
15 I'm looking at my computer, it's because I'm  
16 watching because I have a question perhaps about  
17 what was said. I'm not playing cards or anything  
18 over here, I'm trying to double-check. It's a  
19 horrible habit that's built up in me over the many  
20 years. When I'm talking to my children or someone  
21 else, I sometimes look for the screen so I can look  
22 back at what they said and it's not there. It only  
23 works in trial, so I had to get used to that.

24 Next to her is Rod Reynolds, my court  
25 administrator. He organizes everything for us. And

1 to his left is Amber Woodward. She's one of my law  
2 clerks, came to us from Washington University and  
3 the 6th Circuit. We are lucky to have her for the  
4 year.

5 And Jim Everett, who is one of our court  
6 security officers, is also one -- you will see him.  
7 We don't always necessarily have the same court  
8 security officer. Mr. Everett was a high level  
9 official with the Dallas Police Department for  
10 several years and the Police Chief in Austin for  
11 many years. If you recognize him from your college  
12 days, he's instructed to pretend like he doesn't  
13 remember you.

14 All right. We talked a little bit about  
15 the case. It is a civil case. It involves  
16 allegations in a complaint, unlike in a criminal  
17 case where a case goes through a grand jury process.  
18 It's screened for probable cause in a civil case.  
19 The allegations come to the Court by the filing of a  
20 complaint, by plaintiff through his attorney.

21 And that doesn't say anything good or bad  
22 about the allegations, but they are allegations.  
23 And the plaintiff, as the charging party, has to  
24 prove the allegations to the jury by a preponderance  
25 of the evidence. So that's the role of the -- in a



1 civil case of the plaintiff.

2 The defense has no burden. They can put  
3 evidence on if they want, but it's up to them. But  
4 the burden of proving the allegations lays squarely  
5 on the shoulders of the plaintiff.

6 In this particular case, we don't talk  
7 about the evidence before the case gets started, but  
8 I can tell you a little bit about the case. And the  
9 purpose of that is to make sure there is no one out  
10 there in this particular area that has a particular  
11 recent experience or just a general bias or  
12 prejudice that you don't think you could set aside  
13 in this case.

14 And let me say that there isn't a case  
15 that comes before us as adults, whether it's an  
16 employment discrimination case, an insurance  
17 contract case, criminal burglary of a vehicle case,  
18 that someone on our jury panel hasn't had some  
19 experience with. So it's not that you have a good  
20 or bad experience in this area.

21 The question is if you've had one, can you  
22 put it aside. Most often people can, but if they  
23 can't from their heart of hearts, then we need to  
24 know that because both sides deserve to have seven  
25 completely objective arm's length people looking at

1 the case.

2           The allegations here are generally that a  
3 Texas state statute and a federal statute, which  
4 govern debt collection practices -- and I think  
5 everyone is familiar that there are laws that cover  
6 debt collection practices. The allegations are that  
7 the defendants, through individuals working for the  
8 company in the process of collecting a debt,  
9 violated these statutes. Again, those are the  
10 allegations. Whether or not there is evidence to  
11 prove them is another matter, and that's for the  
12 jury to decide. But that's generally what the case  
13 is about.

14           Now, as I tell you that right now, is  
15 there anyone in particular that has an issue they  
16 can tell me up front that would affect them in this  
17 particular case? And I will start row by row. I'm  
18 not going to interrogate you as you sit there about  
19 what the problem was. The question is, can you be  
20 fair? If there's something you want to talk to us  
21 about and you think we should know, again, that  
22 would be something we could talk about in private  
23 with the lawyers and the one juror after we finish  
24 this general part of the jury selection.

25           So as I -- as I go row by row, is there

1 anyone on the first row, going across from Mr. Seay  
2 through Mr. Kalinowski, who would have an answer to  
3 that question? Not have you had an experience in  
4 this regard, but have had an experience that you  
5 think might affect you in this case? Anyone on the  
6 first row. Take it by your silence that there is  
7 not. Anyone on the second row? Take it by your  
8 silence there is not.

9           What I will do now is give you a chance to  
10 get exercise and verify that everyone is where we  
11 think they are in the seating chart. I will ask you  
12 each to stand and state your name one by one, stand  
13 and then sit down.

14           We are also -- again, because this record  
15 is of everything that happens, including what the  
16 jurors on the panel say, please speak up.

17           So Mr. Seay.

18           PROSPECTIVE JUROR SEAY: Cedric Seay.

19           PROSPECTIVE JUROR DENNIE: Sheryl Ann  
20 Dennie.

21           PROSPECTIVE JUROR MORRIS: Oliver Morris.

22           PROSPECTIVE JUROR PARKER: Marilyn Parker.

23           PROSPECTIVE JUROR LETOT: Paul Letot.

24           PROSPECTIVE JUROR SIEGEL: Melody Siegel.

25           PROSPECTIVE JUROR BROOKS: Reginald

1 Brooks.

2 PROSPECTIVE JUROR FOX: Karen Fox.

3 PROSPECTIVE JUROR BRAUD: Patricia Braud.

4 PROSPECTIVE JUROR MEDINA: Jere Medina.

5 PROSPECTIVE JUROR McINTOSH: Ollicsia

6 McIntosh.

7 PROSPECTIVE JUROR ABDELJABAR: Ribhi

8 Abdeljabar.

9 PROSPECTIVE JUROR MAURER: T. Maurer.

10 PROSPECTIVE JUROR GAITHER: Greg Gaither.

11 PROSPECTIVE JUROR STROTHER: Sylvia

12 Strother.

13 PROSPECTIVE JUROR KALINOWSKI: Joseph

14 Kalinowski.

15 PROSPECTIVE JUROR OSBORNE: Cassandra

16 Osborne.

17 PROSPECTIVE JUROR MICHENER: Ria Michener.

18 PROSPECTIVE JUROR RENFRO: Larry Renfro.

19 PROSPECTIVE JUROR RYDE: Donna Ryde.

20 PROSPECTIVE JUROR MOFFITT: Candace

21 Moffitt.

22 PROSPECTIVE JUROR KAY: Gary Kay.

23 PROSPECTIVE JUROR COLLINS: Audra Collins.

24 PROSPECTIVE JUROR BUERMAN: Stuart

25 Buerman.

1 PROSPECTIVE JUROR GONSER: Stephanie  
2 Gonser.

3 PROSPECTIVE JUROR JACKSON: Vershunda  
4 Jackson.

5 PROSPECTIVE JUROR DZANGARE: Rwisai  
6 Dzangare.

7 PROSPECTIVE JUROR AGUIRRE: Margarita  
8 Aguirre.

9 PROSPECTIVE JUROR BELL: Tanya Bell.

10 THE COURT: Thank you. Now that you have  
11 had a chance to hear a little bit about what the  
12 case is about, I'm going to go back in a few minutes  
13 and ask you some more questions about this  
14 particular area.

15 But with jury selection, generally, and  
16 the trial process, generally, again, we have -- in a  
17 criminal case, it's the prosecution; they bring the  
18 case, they have the burden of proof. In a civil  
19 case, it's the same; the plaintiff brings the case,  
20 they have the burden of proof.

21 The Court is not involved in the  
22 fact-finding. The Court is more like an umpire,  
23 makes the decisions on procedural issues, timing  
24 issues, evidentiary issues, and otherwise has no say  
25 in or opinion about who should win or lose in this

1 case.

2           The jury has the most important role, and  
3 let me say this: Every one of us, especially in  
4 today's society, we are all so busy. Everyone --  
5 each one of you have had many things that you have  
6 had to put aside and people that you have had to  
7 inconvenience, including yourselves, to come down  
8 here today.

9           And most judges will tell you, and I have  
10 been doing this for close to 20 years, one of the  
11 most precious rights that we have in this country is  
12 a jury trial, unlike many countries that don't.  
13 This is a chance for a jury of citizens who are  
14 unconnected with the case to hear allegations made  
15 by someone against someone else and decide what  
16 happened. And that is a critical, critical power  
17 that our Constitution gives us as citizens.

18           So remember, as I always try to remind  
19 people, that as you are concerned and probably  
20 getting more worried as the days came closer to this  
21 about what this was going to do to your life, please  
22 do remember that the parties in this case, which was  
23 filed in 2011, have been waiting for this day for a  
24 long time and for the seven of you who will decide  
25 what happened for a long time. And as I said, we

1 will keep this as efficient and smoothly running as  
2 possible.

3 It's all about this notion that undergirds  
4 our society that fairness should pervade in areas of  
5 disputes. And in order to do that, there ought to  
6 be a process by which decisions are made by people  
7 who aren't connected to the dispute.

8 It's a beautiful thing to watch play out,  
9 and I have over many years. As I said, this  
10 particular trial will be short. The Court, as I  
11 mentioned, decides the evidence, what comes in.  
12 That's important, especially in today's age, because  
13 the evidence has to be admissible in court and  
14 admitted by the Court for you to consider. There  
15 are lots of reasons for that.

16 The basic driving force is this idea of  
17 fairness. You don't want people who are listening  
18 to your case talking to outside sources, talking to  
19 the person that you have a dispute with next door,  
20 googling and finding out something that someone said  
21 about you that might affect their ability to judge  
22 you in a case.

23 So any outside sources about this case  
24 cannot be consulted. We never -- when I started  
25 this judging business years ago, we didn't have

1 Google, we didn't have cell phones, we didn't even  
2 have real time court reporters. Things have changed  
3 so much. We have so much access to information.

4 It also has caused, in some courts,  
5 problems with people googling outside information  
6 about a particular case. I really don't think that  
7 there's anything out there, but I want to make sure  
8 that everyone knows that, from this point on, there  
9 shouldn't be any discussion about this case, even at  
10 breaks before we pick the jury.

11 Occasionally you might have someone who --  
12 the only way that you all know each other is because  
13 you are here today, together. So your common factor  
14 is that you are on a jury panel on a particular  
15 case. So it naturally would be an instinctive thing  
16 to maybe talk about this kind of case. But that's  
17 the kind of thing that would make us have to start  
18 all over again. So talk about anything but.

19 It used to be you could talk about the  
20 Cowboys. And of course it's off season now, but  
21 there has to be a lot of other topics in this day  
22 and age in the news that you can talk about. Please  
23 don't talk about the case so we don't have to start  
24 over again. Please don't Google or consult any  
25 outside source about the issues in this case,



1 because that's all about the evidentiary points.

2           Again, the jury will be seated, I hope,  
3 within an hour or so at the most, and sworn. If  
4 there is something that you think the Court needs to  
5 know about you serving, please let me know. I can't  
6 say that a vacation or something like that  
7 disqualifies you, but I want to make sure there  
8 isn't anything -- which occasionally happens --  
9 where I say, speak now or forever hold your peace,  
10 and then everyone is seated.

11           And as I had one time, one young lady put  
12 her head on the bar over there and wouldn't look  
13 over here and wouldn't look up, thinking she had  
14 slid under the radar. And sure enough, she ended up  
15 on the jury and had issues with being on the jury,  
16 and at that point it was too late.

17           I can't tell you that you can get excused  
18 for any reason, but there may be something private  
19 or otherwise that you need to tell me about your  
20 ability to serve. So please let me know; not right  
21 this minute, we will talk about that as we go.

22           So on that particular point, is there  
23 anyone with any physical or other type of personal  
24 ailment that could affect your ability to see, hear,  
25 or sit through again a few-day trial?

1           Anyone on the first row? And I'm not  
2 going to ask you to speak about your specific  
3 condition. I'm looking over here and I'm getting --  
4 one moment, please. Ms. Osborne -- no, Ms. Braud.  
5 Is that correct?

6           PROSPECTIVE JUROR BRAUD: Do you want me  
7 to tell you?

8           THE COURT: Is it a back or something like  
9 that?

10          PROSPECTIVE JUROR BRAUD: No, it's  
11 hearing.

12          THE COURT: Hearing. Okay.

13          PROSPECTIVE JUROR BRAUD: I can hear you  
14 fine, but I have been in courts where it was hard to  
15 hear.

16          THE COURT: Okay. I will talk to you a  
17 little bit about that more and make sure we are  
18 clear. As we go through this, if you are having  
19 trouble hearing anyone, just put your hand up and we  
20 will make sure that they speak up. Okay?

21          Anyone else on the first row? We have a  
22 very healthy group here. Second row? Yes, ma'am.  
23 That is Ms. Bell.

24          PROSPECTIVE JUROR BELL: I have a problem.  
25 I have lupus.

1 THE COURT: I will talk to you a little  
2 bit more about that in private. Thank you.

3 Did I miss anyone? Once in a while  
4 there's someone that comes down for jury service  
5 that has moral, personal, religious, or other  
6 reasons that they can't sit in judgment. Believe  
7 me, it's a very unsettling thing when you get  
8 through all of this and get through the trial and  
9 you find out that someone on the jury can't decide  
10 because they don't think it's right for them to make  
11 a decision.

12 Let's make sure there isn't anyone that  
13 has that kind of personal concern that you would not  
14 be able to make a decision for any reason. Anyone  
15 on the first row.

16 Ms. Siegel? I'm going to talk to you  
17 about that separately. Okay?

18 Anyone else on the first row? Somebody?  
19 Yes, ma'am, and that is Ms. Strother?

20 PROSPECTIVE JUROR STROTHER: Yes, ma'am.

21 THE COURT: We will talk about that  
22 separately, as well. Did I miss anyone?

23 As I mentioned, this case involves debt  
24 collection practices. In this day and age, most of  
25 us are more familiar with those kinds of things than

1 we ever used to be, with our economy and all of the  
2 issues in the news about the economy.

3 Is there anyone -- and I'm not going to  
4 ask you to state it, please don't state it out loud.  
5 Is there any who has a strong feeling about debt  
6 collection practices, either positive or negative,  
7 that you think we need to hear about? And we will  
8 start on the first row. We will start on the first  
9 row, and I won't ask you to tell me now. Anyone on  
10 the first row that has an issue? And I will go back  
11 to you, Ms. Siegel.

12 How about the second row? Yes, ma'am,  
13 Ms. Bell. Okay.

14 Is there anyone who, you or a close family  
15 member, would affect you or a close friend wherein  
16 it would affect you, has had a bad experience with a  
17 debt collection entity?

18 And I'm going to talk to you, Ms. Siegel.  
19 Thank you. Anyone on the first row? And I am going  
20 over then to Ms. Braud.

21 PROSPECTIVE JUROR McINTOSH: McIntosh.

22 THE COURT: I'm sorry. Ms. Braud, you  
23 raised your hand for that, as well, did you not?

24 PROSPECTIVE JUROR BRAUD: Yes.

25 THE COURT: And Ms. McIntosh, you did, as

1 well?

2 PROSPECTIVE JUROR McINTOSH: Yes.

3 THE COURT: Anyone else on the first row?  
4 Second row? Okay. Okay.

5 Let's talk about student loans. Have any  
6 of you had -- or family member or close friend -- an  
7 issue, a negative experience with regard to a  
8 student loan, college or otherwise? You don't have  
9 to spell out what the problem was, just want to know  
10 if there was one, and we can talk about it in  
11 private.

12 Anyone on the first row? Anyone on the  
13 second row? I take it by your silence that you  
14 don't.

15 Has anyone -- and I ask this as a  
16 follow-up question, and I think I know the answer.  
17 Has anyone had a degree, college or otherwise -- or  
18 a close family member or friend -- withheld because  
19 of an issue with a student loan? A degree withheld  
20 as a consequence for not paying or not -- or  
21 defaulting on a student loan? Anyone on the first  
22 row? No? Second row? Okay. I see no hands.

23 This is probably going to get some  
24 answers. How many of you have worked in the  
25 telemarketing field? How many of you have worked in

1 the telemarketing field or a spouse? Someone that  
2 you would have regularly heard from, not your  
3 neighbor, but you know what I mean, someone that you  
4 would be close enough to have an opinion. I will  
5 get to you in a minute, Ms. Bell.

6 Anyone on the first row, telemarketing  
7 field, cold calls? That's Ms. Dennie?

8 PROSPECTIVE JUROR DENNIE: Yes, ma'am.

9 THE COURT: Okay. Without telling me, is  
10 there anything about that experience in the  
11 telemarketing field that you think could affect you  
12 in this case?

13 PROSPECTIVE JUROR DENNIE: No, ma'am.

14 THE COURT: Anyone else on the first row  
15 that I have missed? And that is Ms. Medina.  
16 Working yourself or someone in your family?

17 PROSPECTIVE JUROR MEDINA: Myself.

18 THE COURT: Anything about that that might  
19 affect you in this particular case?

20 PROSPECTIVE JUROR MEDINA: I don't think  
21 so.

22 THE COURT: Okay. And for both Ms. Dennie  
23 and Ms. Medina, were these positions where you had  
24 to make calls to people, not necessarily debt  
25 collection, but just calls to strangers for one

1 reason or another to sell or something like that.

2 PROSPECTIVE JUROR DENNIE: Yes, Your  
3 Honor.

4 PROSPECTIVE JUROR MEDINA: (Nodding head.)

5 THE COURT: Second row? I see a hand, and  
6 that is going to be Mr. Kay? Mr. Buerman? You,  
7 yourself, worked in the telemarketing field?

8 PROSPECTIVE JUROR BUERMAN: Yes.

9 THE COURT: Anything about that experience  
10 that might affect you in this case?

11 PROSPECTIVE JUROR BUERMAN: No.

12 THE COURT: And Ms. Bell. I have a lot of  
13 things to talk to you about. Thank you. All right.

14 Again, we talked about the defense --  
15 defendant corporation's name here, it's Regional  
16 Adjustment Bureau. There are two similarly named  
17 companies, one in Texas and one in Tennessee. This  
18 particular company, as addressed by Ms. Malone, is  
19 from Tennessee. Now that I have had a chance to  
20 hear about this company and generally about the  
21 case, is there anyone familiar with this company or  
22 the other one? Okay. I don't see any hands on that  
23 question.

24 Has anyone in the courtroom, starting with  
25 the first row, been involved with either working for

1 it, a spouse working for it, or in the process,  
2 itself, with the debt consolidation process? We  
3 hear a lot about that these days. All you have to  
4 do is turn on KRLD or some of these others and  
5 there's someone talking about debt consolidation.  
6 We get these mailers about debt consolidation.

7 Anybody involved in that process or a  
8 close friend or family member? Anyone on the first  
9 row?

10 Yes, ma'am. Ms. Strother?

11 PROSPECTIVE JUROR STROTHER: Yes.

12 THE COURT: Okay. We are going to talk to  
13 you about something else.

14 And the second row, debt consolidation?  
15 Okay.

16 Now, also you all will know -- and most of  
17 you that have been on juries already know this: The  
18 parties and the lawyers and everyone associated with  
19 my court has to stay away from you all at arm's  
20 length. Even hello, good morning, could cause a  
21 problem. So no one is trying to be rude, but they  
22 have been specifically instructed not to have any  
23 kind of eye contact if they can avoid it with any of  
24 you, not to get on the elevator with you. So please  
25 understand that's what's going on.



1           If someone -- and I don't think it will  
2   ever happen, but if someone were to approach you  
3   about this case in any fashion, to notify the Court  
4   immediately so that we can take care of that.  
5   Again, I don't expect that to happen.

6           Let me ask before we break -- and I talked  
7   to some of you one by one -- yes, ma'am, Ms. Dennie?

8           Could you stand up?

9           PROSPECTIVE JUROR DENNIE: I have  
10   Christian Credit Counseling. Is that the same  
11   thing? I don't know if it's debt consolidation, but  
12   I didn't want to misrepresent.

13          THE COURT: Thank you. You were part of  
14   that?

15          PROSPECTIVE JUROR DENNIE: Yeah. They  
16   just helped me get my bills and stuff when I was  
17   like 22 years old --

18          THE COURT: Okay.

19          PROSPECTIVE JUROR DENNIE: -- together.  
20   But I didn't have a bad experience, and I didn't  
21   necessarily call it debt consolidation.

22          THE COURT: All right. Thank you. Anyone  
23   else?

24           Is there anything in particular that I  
25   haven't talked about that you are sitting there and

1 you are thinking, I really need to talk about this  
2 but I don't know -- the question hasn't been asked.

3 At some point one lawyer in one case said  
4 to the jury, if you talk you walk, and that was not  
5 true. In other words, if you talk, you get out of  
6 jury service, that's not correct. But I just want  
7 to make sure there isn't anything out there that I  
8 have missed that you feel as though you need to tell  
9 us either with the group or privately? Anyone on  
10 the first row? And we're already going to talk to  
11 you Ms. Medina. Okay. And I have both Ms. Dennie  
12 and Mr. Morris. Is that right, Mr. Morris?

13 MR. MORRIS: Yes.

14 THE COURT: Okay. Second row? Yes, sir.  
15 That is Mr. Renfro. We will talk about that. I  
16 will bring you up separately. All right. Anyone  
17 else? All right.

18 Ms. Fox, you're married to an attorney.

19 PROSPECTIVE JUROR FOX: I am.

20 THE COURT: Where does your husband work?

21 PROSPECTIVE JUROR FOX: At

22 Fish & Richardson.

23 THE COURT: I thought you looked familiar.  
24 All right. I think that's probably my last question  
25 will be if there's anyone who has worked in the

1 legal area as a paralegal or as an attorney or  
2 obviously your spouse, husband or wife, works for a  
3 law firm here in town. I think it's helpful to know  
4 that. We have already heard from Ms. Fox that her  
5 husband is a civil attorney working for one of the  
6 firms.

7 Is there anyone else on the first row that  
8 worked in law, paralegal, or a spouse or a relative?

9 PROSPECTIVE JUROR BRAUD: I have a son  
10 that's a lawyer.

11 THE COURT: Where does he work?

12 PROSPECTIVE JUROR BRAUD: In Alabama. And  
13 I have a sister-in-law that's a lawyer in Houston.

14 THE COURT: Do you know what kind of law  
15 they practice?

16 PROSPECTIVE JUROR BRAUD: She does  
17 environmental.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR BRAUD: And he does more  
20 corporate.

21 THE COURT: Okay. Thank you. Anyone  
22 else? First row? Yes, ma'am, Ms. Parker?

23 PROSPECTIVE JUROR PARKER: My daughter is  
24 a senior legal clerk in Collin County-Frisco. It's  
25 a peace court, and she handles civil matters.

1 THE COURT: Okay. Thank you. Anything  
2 about her experience there in court -- in Collin  
3 County you said?

4 PROSPECTIVE JUROR PARKER: Collin  
5 County-Frisco, yes, ma'am.

6 THE COURT: -- that could affect you here?

7 PROSPECTIVE JUROR PARKER: No, I don't  
8 believe so.

9 THE COURT: Frisco has grown in the last  
10 20 years.

11 PROSPECTIVE JUROR PARKER: Yes.

12 THE COURT: Lot more business up there.

13 Anyone on the second row? Okay. All  
14 right. Ladies and gentlemen, we're going to break  
15 now so the lawyers and I can talk to you  
16 individually as to some of you that had issues and  
17 questions. Please remember not to talk about the  
18 case. Without anything further, I'm going to go  
19 ahead and have everyone rise, and I will have Mr.--  
20 our court security officer escort you out to the  
21 hallway.

22 (Jury panel excused.)

23 THE COURT: Counsel, I will ask with  
24 regard to those witnesses, if they are sitting out  
25 there, maybe Mr. Everett can have them come in and

1 you can excuse them without any conversation in  
2 front of the jury. Do you know where they are?

3 MR. RADBIL: They should be right outside.

4 THE COURT: Do you know which ones they  
5 are, the Wilsons?

6 CSO EVERETT: Yes, I know where they are.  
7 I had them go and sit by Judge Furgeson's chambers.

8 THE COURT: Can you bring them back in,  
9 and I think we can excuse them.

10 Let's bring your chairs around.

11 CSO EVERETT: I have a third one out there  
12 also.

13 THE COURT: Who is the third one?

14 Yes, ma'am, who are you?

15 MS. CURETON: Jaclynn Cureton.

16 THE COURT: Ms. Malone, your position was  
17 to -- is there an agreement on excusing --

18 MS. MALONE: I didn't subpoena them,  
19 Judge, but I'm happy to excuse them.

20 THE COURT: Mr. Radbil, I believe we  
21 addressed these issues yesterday in court.

22 MR. RADBIL: Yes, Your Honor.

23 THE COURT: I'm not asking you to waive  
24 what you brought up yesterday, because you certainly  
25 haven't. But if they are the subject of the Court's

1 order yesterday, my recollection is that there is no  
2 need for them to remain as witnesses here.

3 MR. RADBIL: I agree, Your Honor.

4 THE COURT: Ladies and gentlemen, I don't  
5 know if -- I am certain -- if you will move to the  
6 side so I can talk to them. I am certain that you  
7 are not going to be needed for the plaintiff's case  
8 in chief based upon some legal hearings we had  
9 yesterday.

10 That doesn't mean there might not be  
11 something that would come up where there would be an  
12 issue where you might have to be called as something  
13 we call rebuttal witnesses. So please be sure you  
14 are available in the next few days. I'm sure you  
15 have contact information with Mr. Radbil; is that  
16 right?

17 MR. WILSON: Yes.

18 THE COURT: Go ahead and identify  
19 yourself.

20 MR. WILSON: Keith Wilson.

21 MRS. WILSON: Christine Wilson.

22 MS. CURETON: Jaclynn Cureton.

23 THE COURT: Are you in the Dallas area?

24 MR. WILSON: My wife and I are.

25 THE COURT: Ms. Cureton.

1 MS. CURETON: I am an hour-and-a-half  
2 away.

3 THE COURT: You are in the general  
4 Metroplex, you don't have to fly here.

5 MS. CURETON: Right.

6 THE COURT: Please be sure you are  
7 available until Mr. Radbil let's you know that the  
8 trial is over in case you are needed for rebuttal.

9 Otherwise, you are excused. Please be  
10 sure not to say a thing or even look at the jury  
11 panel as you are walking by them.

12 Thank you very much. You are excused for  
13 now.

14 (Witnesses excused.)

15 THE COURT: Go ahead and take a seat,  
16 Mr. Radbil. All right.

17 First one I have a question with is  
18 Ms. Dennie. She's Juror Number 2. She has  
19 something she wanted to tell us that she didn't  
20 mention in front of everyone, and that was in  
21 response to my last question. So let's go ahead and  
22 bring her in. I will ask her some questions, and I  
23 will let you each ask her follow-ups and excuse her  
24 and see where we are.

25 (Ms. Dennie enters the courtroom.)

1 THE COURT: Ms. Dennie, how are you?

2 PROSPECTIVE JUROR DENNIE: Thank you,  
3 fine.

4 THE COURT: One moment.

5 Ms. Dennie, you mentioned something you  
6 wanted to bring up outside the presence of everyone  
7 else. You said -- you talked about something when  
8 you were a teenager, and you can't be much older  
9 than a teenager at this point as I'm looking at you.

10 PROSPECTIVE JUROR DENNIE: I'm 40.

11 THE COURT: You are very young looking. .

12 PROSPECTIVE JUROR DENNIE: Thank you.

13 THE COURT: Okay. What was the issue?

14 PROSPECTIVE JUROR DENNIE: I didn't know  
15 if you were going to bring this up as far as  
16 hardship reasons that you couldn't serve on the  
17 court. The excuse for children on here didn't  
18 really go with my circumstance. But I am a teacher,  
19 and I have small children that don't have before and  
20 after school care. They come to school with me and  
21 come to my classroom with me after. So they have to  
22 be there at 8:20 when I start teaching, and then  
23 they go to their class and are back in my room at  
24 3:30. So I don't have before and after school care  
25 for them.



1 THE COURT: Okay.

2 PROSPECTIVE JUROR DENNIE: And I wasn't  
3 sure that would be an excuse. My husband works,  
4 also, but he had to be late to work and he has to  
5 leave early to come get them.

6 THE COURT: And that's the only issue that  
7 you had to raise with us?

8 PROSPECTIVE JUROR DENNIE: Yes, ma'am.

9 THE COURT: Let me talk to the lawyers for  
10 a few minutes, and I will have you step outside.

11 PROSPECTIVE JUROR DENNIE: Yes, ma'am.  
12 Thank you.

13 (Ms. Dennie exits courtroom.)

14 THE COURT: I would see no reason to have  
15 you asking her questions about the only issue that  
16 she has. I don't know what your position is. You  
17 have no obligation. We have plenty of jurors here.  
18 Do either side take a position on agreeing to? We  
19 don't tell her right now that we agree to excuse  
20 her, she just won't be part of the panel.

21 Mr. Radbil and Ms. Malone?

22 MS. MALONE: I will agree to excuse her.

23 MR. RADBIL: She may go.

24 THE COURT: Thank you both. We will have  
25 her back in, and she won't know how she got out of

1 it. That's one for cause, and that takes us to 14.

2 The next one is Mr. Morris. And he didn't  
3 say anything except that he had something to talk to  
4 us about. So let's bring Mr. Oliver Morris in.

5 (Mr. Morris enters the courtroom.)

6 THE COURT: Mr. Morris, if you will come  
7 up to the microphone. How are you?

8 MR. MORRIS: Fine. How are you?

9 THE COURT: Just fine. You mentioned  
10 something about having an issue, perhaps, that you  
11 wanted to talk to us about about service.

12 MR. MORRIS: I had a debt consolidation  
13 with the Wells Fargo, and I am in the last two years  
14 of settling it; 854 per month.

15 THE COURT: Thank you. Is there anything  
16 about that experience -- and there are no right or  
17 wrong answers at this point.

18 MR. MORRIS: Okay.

19 THE COURT: Just think about if you were a  
20 juror for either side, is there anything about that  
21 experience that you think might affect your ability  
22 to be fair in this case?

23 MR. MORRIS: No, there is not.

24 THE COURT: Thank you very much. I  
25 appreciate that. I will let the lawyers ask you a

1 question or two. I will start with Mr. Radbil. Any  
2 questions?

3 MR. RADBIL: No, sir.

4 THE COURT: Anything, Ms. Malone?

5 MS. MALONE: I didn't hear what you said  
6 about the debt consolation.

7 MR. MORRIS: They consolidated all of my  
8 bills, and it comes out to \$854 per month, and I am  
9 in the last two years of settling. And I think --  
10 this is '13; in '15 I will be through.

11 MS. MALONE: Okay. So if I understand,  
12 you went to Wells Fargo and lumped everything  
13 together?

14 MR. MORRIS: They consolidated my house  
15 and all of that.

16 MS. MALONE: This is not like a Dave  
17 Ramsey consolidation?

18 MR. MORRIS: No.

19 THE COURT: Thank you very much. That's  
20 exactly what we needed to know. Thank you. Okay.

21 (Mr. Morris exits the courtroom.)

22 THE COURT: The next person, ladies and  
23 gentlemen, that I have is Melody Siegel. She had an  
24 issue with just sitting in judgment, and she had an  
25 issue with debt. So let's go ahead and bring

1 Ms. Siegel in.

2 (Ms. Siegel enters the courtroom.)

3 THE COURT: Ms. Siegel, how are you?

4 PROSPECTIVE JUROR SIEGEL: I'm fine, thank  
5 you.

6 THE COURT: You are a teacher?

7 PROSPECTIVE JUROR SIEGEL: Yes, ma'am.

8 THE COURT: How many years have you been a  
9 teacher?

10 PROSPECTIVE JUROR SIEGEL: I've been at my  
11 current position six-and-a-half years. I've taught  
12 one-year-olds, and I've taught the 12-month to  
13 18-month group. In January I was placed in with the  
14 infants, so I have the two to eight-month-old ones  
15 now.

16 THE COURT: That's wonderful. Great  
17 career for people and for the people you serve.

18 PROSPECTIVE JUROR SIEGEL: Yes. I have  
19 been in care longer than that, but my current  
20 position is six-and-a-half years at this place.

21 THE COURT: You said a couple of things.  
22 One is about deciding. Let's talk about that.

23 PROSPECTIVE JUROR SIEGEL: I have a very  
24 hard time listening to both sides of the issues,  
25 because I hear the good and the bad to both sides,

1 and I have trouble making decisions on those.

2 And also regarding this matter, a number  
3 of years ago, my ex-husband and I were in a very  
4 severe financial situation, and we were constantly  
5 harassed by collectors. Needless to say, it left a  
6 sour taste in my mouth.

7 Things are better now. I am single now  
8 and have been for a number of years. But in the  
9 back of my mind, I'm not sure how well I would do  
10 deciding a situation like this since I've been in  
11 those shoes. I understand the company's position,  
12 the company need, and I also understand the other  
13 side of it. And I don't know if I would be able to  
14 make an easy decision or if I would struggle with  
15 it.

16 THE COURT: Well, this is exactly what we  
17 need to hear. And there are no right or wrong  
18 answers as to how you feel.

19 PROSPECTIVE JUROR SIEGEL: Right.

20 THE COURT: Just picture yourself on the  
21 jury for each of these people, and would you want on  
22 there given what you have.

23 PROSPECTIVE JUROR SIEGEL: Right.

24 THE COURT: So I will let the lawyers each  
25 ask you a couple of questions. I appreciate your

1 candor very much. And I will start with plaintiff's  
2 counsel. Mr. Radbil.

3 MR. RADBIL: Yes. Thank you for your  
4 time.

5 PROSPECTIVE JUROR SIEGEL: Yes, sir.

6 MR. RADBIL: So given the history, do you  
7 think you could follow the law based on the  
8 evidence, or do you think that your emotions would  
9 affect your ability to follow the law in terms of  
10 some preference over who would win and who should  
11 lose?

12 PROSPECTIVE JUROR SIEGEL: To be honest, I  
13 would like to think I would have the ability to  
14 follow the law. I would pray that my emotions would  
15 not get to me. I'm not -- I would like to guarantee  
16 it, but I don't know that I can honestly guarantee  
17 it.

18 MR. RADBIL: I appreciate that. Thank  
19 you.

20 MS. MALONE: No questions, Your Honor.

21 THE COURT: Thank you, Ms. Siegel. We  
22 will have a discussion and make a determination. We  
23 will have all of you back in here within a few  
24 minutes.

25 (Ms. Siegel exits the courtroom.)

1 THE COURT: Okay.

2 MS. MALONE: Judge, I'm sorry, do you want  
3 us -- if we're going to move for cause, do you want  
4 us to wait to the end?

5 THE COURT: Person by person.

6 MS. MALONE: I would move to strike her  
7 for cause.

8 THE COURT: And for the record, your  
9 position is?

10 MS. MALONE: Because of her testimony  
11 that, from her prior experience that had left a bad  
12 taste in her mouth that she could emotionally not be  
13 able to make a fair decision in this case, which  
14 would be prejudicial to my client.

15 THE COURT: Mr. Radbil?

16 MR. RADBIL: I agree.

17 THE COURT: Okay. I appreciate that. I  
18 agree, as well. Ms. Siegel will be struck for  
19 cause. That means we have two out for cause, so we  
20 are up to juror 15.

21 MR. RADBIL: Who was the first for cause?

22 THE COURT: Dennie, Ms. Dennie. So we  
23 have Number 2 stricken for cause and Number 6  
24 stricken for cause, and we go to Ms. Braud, who had  
25 the issue of hearing. I think that was basically

1 her issue. Let's have her come in.

2 MS. MALONE: She said she had a problem  
3 with debt collectors.

4 THE COURT: She did.

5 (Ms. Braud enters the courtroom.)

6 THE COURT: Ms. Braud, come on up. On the  
7 hearing issue, tell me a little bit about that,  
8 because I know that can be difficult. It's  
9 frustrating when you can't hear people.

10 PROSPECTIVE JUROR BRAUD: I can't hear if  
11 people aren't speaking loud enough. And I have  
12 found that the guy downstairs today, he was really  
13 hard for me to hear, but he was talking really soft.  
14 I could hear you just fine. But I think if someone  
15 is not at a mic, you know, and I'm in the back of  
16 the room or back, you know, row, it's just hard for  
17 me to hear.

18 THE COURT: All right.

19 PROSPECTIVE JUROR BRAUD: I do have some  
20 hearing loss. I don't wear a hearing aid. I'm not  
21 to that point.

22 THE COURT: Ms. Braud, you also mentioned  
23 something about debt collection practices. Did you  
24 have an issue with regard to any of that?

25 PROSPECTIVE JUROR BRAUD: Well, I have a



1 special needs child that I had growing up. She's  
2 doing wonderful now. But we had a lot of medical  
3 bills, and we had a lot of times that we couldn't  
4 pay everything out, and we were hounded by debt  
5 collectors calling us.

6 And actually, to this day, there's still  
7 some debt that came after my daughter turned 18.  
8 Everything was in her name, so she still has debt  
9 collectors calling her on some bills that she is not  
10 able to pay at this point because she doesn't make  
11 enough income. So I don't feel like I'm prejudiced  
12 against them, I just think I got used to being  
13 hounded, so I just sort of kind of tune it out now.

14 It is a source of annoyance when it is  
15 happening to you continually. And this is from the  
16 time she was born until she was about 20 years old.  
17 She had 12 surgeries. We incurred hundreds of  
18 thousands of dollars of medical expenses, and a lot  
19 of that we were not financially available to pay  
20 back. We eventually did. I spent all these years  
21 paying medical debts back.

22 THE COURT: Well, I appreciate that  
23 disclosure. She's okay now, your daughter?

24 PROSPECTIVE JUROR BRAUD: She's getting  
25 married in May. She's doing very well.

1           THE COURT: Good. There are no right or  
2 wrong answers here. You have to let us know in your  
3 heart of hearts if, given that personal experience,  
4 if you think you can set that aside really as  
5 someone who could be able to sit on the jury for  
6 both sides or if you think it might affect you if  
7 you hear certain things that ring a bell.

8           PROSPECTIVE JUROR BRAUD: It could. I  
9 don't know really the facts of the case, but it  
10 possibly -- you know, I'm not going to say  
11 definitely. It just depends on how it is presented,  
12 but it could make me think, well, I might be more  
13 sympathetic because I have had that experience.

14          THE COURT: Okay.

15          PROSPECTIVE JUROR BRAUD: I never had any  
16 legal things, just more threatening kind of, you  
17 know, things. Like, if you don't, you know, pay,  
18 we're going to do this kind of thing.

19          THE COURT: I'm going to let the lawyers  
20 each ask you a couple of questions just to follow  
21 up, and I will make sure they speak up. Mr. Radbil,  
22 did you have any questions?

23          MR. RADBIL: Yes, very briefly. In spite  
24 of your experiences with debt collectors and debts  
25 in the past, do you think you would be able to

1 follow the law and completely set aside any  
2 emotional influence based on your past experience  
3 and just look at the facts of this particular case  
4 objectively? Or do you think that's not  
5 guaranteeable.

6 PROSPECTIVE JUROR BRAUD: I think I could  
7 follow the law, but I could not guarantee that I  
8 couldn't just put everything aside.

9 MR. RADBIL: Do you think that would  
10 affect your ability --

11 PROSPECTIVE JUROR BRAUD: I think it would  
12 to a certain extent.

13 THE COURT: Thank you, Mr. Radbil.

14 Ms. Malone?

15 MS. MALONE: No, Your Honor.

16 THE COURT: Thank you very much, Ms.  
17 Braud, and we will be bringing all of you back in  
18 here in just a few minutes. I'm happy to hear about  
19 your daughter. I'm sure that's a lot of work for  
20 you.

21 (Ms. Braud exits the courtroom.)

22 MS. MALONE: Move to strike, Your Honor.

23 MR. RADBIL: No objection.

24 THE COURT: All right. I appreciate that.  
25 I agree. That's Number 9. So we're up to 16. I've

1 -- I believe it's Ms. Medina that worked as a  
2 telemarketer and had something she wanted to tell  
3 us. So let's bring Ms. Medina up.

4 (Ms. Medina enters the courtroom.)

5 THE COURT: Ms. Medina, how are you?

6 PROSPECTIVE JUROR MEDINA: I'm great.

7 THE COURT: I know that you had a -- you  
8 had something that you wanted to talk to us about.  
9 Looks like you and your husband both work in the  
10 schools.

11 PROSPECTIVE JUROR MEDINA: Yes, and own a  
12 restaurant. So after three, I'm the primary  
13 caregiver of two little twins, so he's gone. I  
14 didn't know what time this ended or anything, but  
15 I'm it.

16 THE COURT: Is there anyone that can stand  
17 in for you?

18 PROSPECTIVE JUROR MEDINA: Not that I'm  
19 aware of. I let the lady go at that time so she can  
20 go take care of her children, so. . .

21 THE COURT: Okay. Was there anything  
22 else, other than that issue, which I want to talk  
23 about to the lawyers, insofar as any concerns you  
24 had about the underlying case that we mentioned?

25 PROSPECTIVE JUROR MEDINA: No.

1 THE COURT: Okay. All right.

2 Any questions, Mr. Radbil? Ms. Malone?

3 MR. RADBIL: I understand that you worked  
4 in telemarketing, correct?

5 PROSPECTIVE JUROR MEDINA: Yes.

6 THE COURT: That's not an issue we were  
7 going to address. I don't think that she indicated  
8 she had a problem with that. Is there anything  
9 about the telemarketing at all that would affect  
10 you?

11 PROSPECTIVE JUROR MEDINA: No. It was  
12 home building. It was for a home builder.

13 THE COURT: One more question, Mr. Radbil.

14 MR. RADBIL: I have no more.

15 THE COURT: If you will step outside.

16 (Ms. Medina exits the courtroom.)

17 THE COURT: My thought was this kind of  
18 screening would be ahead of time.

19 MS. MALONE: I will agree to let her go,  
20 Judge.

21 THE COURT: There's no obligation.

22 MR. RADBIL: If she has a family to take  
23 care of, I mean --

24 THE COURT: I appreciate it. I -- again,  
25 if we were getting down to the bottom of the jury, I

1 would disagree and we would keep her. And I have  
2 kept them before, I just don't know why the ladies  
3 and gentlemen come to jury service when they have  
4 something so life-altering that would keep them from  
5 coming.

6 Mr. Radbil, this is up to you. I'm not  
7 forcing you into it, I just want to know what your  
8 position is. Do you agree or not?

9 MR. RADBIL: I do. I think she should  
10 take care of her family.

11 THE COURT: Number 10 is excused for cause  
12 then. That's four, which would be Juror Number 2,  
13 Juror Number 6, Juror Number 9 and Juror Number 10.  
14 And so we're up to 17, and we still have  
15 Ms. Strother to talk about. She had some issues  
16 that she couldn't sit in judgment and maybe some  
17 other things, so let's --

18 MS. MALONE: Judge, you skipped  
19 Ms. McIntosh, who said she had a problem with debt  
20 collectors.

21 THE COURT: She did, and I apologize for  
22 that. I missed her. Let's bring her in.

23 (Ms. McIntosh enters the courtroom.)

24 THE COURT: Ms. McIntosh, right up here to  
25 the microphone, if you will. How are you?

1 PROSPECTIVE JUROR McINTOSH: Good.

2 THE COURT: You mentioned that you had had  
3 an issue with regard to debt collection, and you  
4 also -- do you work for a mortgage company?

5 PROSPECTIVE JUROR McINTOSH: Yes.

6 THE COURT: Tell us about the issues that  
7 you wanted to tell us about.

8 PROSPECTIVE JUROR McINTOSH: I think you  
9 asked was it a friend. It was a friend that had an  
10 issue with a debt consolidation company.

11 THE COURT: Was it a bad experience?

12 PROSPECTIVE JUROR McINTOSH: Yes, it was.

13 THE COURT: It wasn't the defendant,  
14 obviously.

15 PROSPECTIVE JUROR McINTOSH: No, it was  
16 not the defendant.

17 THE COURT: What about that, if anything,  
18 would affect you in this case?

19 PROSPECTIVE JUROR McINTOSH: Nothing.

20 THE COURT: And tell me about the mortgage  
21 business. Where do you work?

22 PROSPECTIVE JUROR McINTOSH: I currently  
23 work for Bank of America, and I am responsible for  
24 saving homes that are in foreclosure.

25 THE COURT: Okay. Is there anything about

1 that work, seeing people that have obvious debt  
2 issues, that you think might color or affect your  
3 ability to be fair to both sides in this case?

4 PROSPECTIVE JUROR McINTOSH: No.

5 THE COURT: Briefly, any questions,  
6 Mr. Radbil?

7 MR. RADBIL: Have you ever been involved  
8 as a witness in a judicial or administrative  
9 proceeding regarding foreclosure or the process?

10 PROSPECTIVE JUROR McINTOSH: No.

11 THE COURT: Okay. Thank you.

12 Ms. Malone?

13 MS. MALONE: The only question I have is,  
14 Ms. McIntosh, in helping these folks through the  
15 process, do you help them rehab their loans  
16 sometimes?

17 PROSPECTIVE JUROR McINTOSH: What do you  
18 mean?

19 MS. MALONE: Refinance or find an  
20 alternate way to repay the loan?

21 PROSPECTIVE JUROR McINTOSH: Yes, through  
22 modifications and repayment plans.

23 THE COURT: You have indicated, other than  
24 your friend who had a bad experience, you can be  
25 fair in this case?



1 PROSPECTIVE JUROR McINTOSH: Yes.

2 THE COURT: Thank you very much,  
3 Ms. McIntosh.

4 (Ms. McIntosh exits the courtroom.)

5 THE COURT: Okay. That takes us to 17. I  
6 don't have anyone else, then, that had an issue  
7 until you get to Renfro --

8 MS. MALONE: You skipped Ms. Strother. We  
9 got you out of order. Ms. Strother said she had a  
10 moral issue and debt consolidation issue.

11 THE COURT: Thank you.

12 MS. MALONE: Number 16 and Number 19 are  
13 both possibly in our strike zone. Number 16 listed  
14 his occupation as retired. The only thing I would  
15 want to know is what his job was so I could weigh  
16 him a little bit. And the same is true for  
17 Mr. Renfro, which is 19.

18 THE COURT: If we get there. And  
19 Mr. Radbil, other than Ms. Strother, anyone else  
20 that you had a question of perhaps because of some  
21 indication or something on their materials?

22 MR. RADBIL: If we can ask what he used to  
23 do, if he's retired, there's -- I think there are  
24 two that are retired, three that are retired, and  
25 then there's some others that are --

1           THE COURT: If we haven't brought them up,  
2 I'm not going to bring them back in. I'm asking  
3 about people that don't have any issues that we are  
4 getting to the end of the list. I'm not going to  
5 bring them back in here to ask what they are retired  
6 from.

7           MR. RADBIL: I would like to bring in  
8 Ms. Ryde.

9           THE COURT: What number is she?

10          MR. RADBIL: Number 20, Your Honor.

11          THE COURT: We may not get to her, but I  
12 will be glad to bring her in. As to Mr. Renfro, if  
13 we get there, but let's bring Ms. Strother in.

14          (Ms. Strother enters the courtroom.)

15          THE COURT: Ms. Strother, come on up here  
16 to the microphone, please. You raised your hand  
17 about having an issue, first of all, just with  
18 deciding on moral grounds who is right and who is  
19 wrong here, and then an issue with debt  
20 consolidation. I appreciate your candor. Go ahead  
21 and tell us what the issues are that might affect  
22 you in this case.

23          PROSPECTIVE JUROR STROTHER: I don't want  
24 to be a jury. I don't believe in judging nobody.

25          THE COURT: So you would not be able to

1 make a decision?

2 PROSPECTIVE JUROR STROTHER: No.

3 THE COURT: Even if the law said you have  
4 to follow the law?

5 PROSPECTIVE JUROR STROTHER: Throw me in  
6 jail.

7 THE COURT: Thank you, Ms. Strother. You  
8 can step outside.

9 PROSPECTIVE JUROR STROTHER: Thank you.

10 (Ms. Strother exits the courtroom.)

11 THE COURT: The thought of trying to  
12 rehabilitate her, I wasn't even able to define any  
13 possibility, so I would strike her for cause. Both  
14 sides agree?

15 MR. RADBIL: Agree.

16 MS. MALONE: Yes, ma'am.

17 THE COURT: All right. I will, because I  
18 looked at this -- that takes us through -- again, we  
19 are at 17. Both sides agree with that?

20 MS. MALONE: Judge, I think we're at 18.

21 THE COURT: Let me make sure. You're  
22 right. We're at 18.

23 In an abundance of caution, because  
24 there's nothing on the spouse side, I'm going to let  
25 you bring Mr. Kalinowski back in here to ask what

1 his occupation was before he was retired, and we  
2 will do that. Juror Number 16. And I will let you  
3 ask Mr. Maurer what his was after that.

4 MS. MALONE: I'm sorry, Judge, I missed  
5 that.

6 THE COURT: I'm going to bring  
7 Mr. Kalinowski in here --

8 (Mr. Kalinowski enters the courtroom.)

9 THE COURT: Mr. Kalinowski, if you will  
10 come up here to the microphone, a very quick  
11 question, and that is: What was your occupation  
12 before you retired?

13 PROSPECTIVE JUROR KALINOWSKI: Computer  
14 programmer.

15 THE COURT: Computer programmer. And for  
16 what company?

17 PROSPECTIVE JUROR KALINOWSKI: Republic  
18 Insurance.

19 THE COURT: Anything about that experience  
20 that could affect you in any of these proceedings  
21 that you have heard about so far?

22 PROSPECTIVE JUROR KALINOWSKI: No.

23 THE COURT: Thank you very much. You may  
24 step back outside.

25 (Mr. Kalinowski exits the courtroom.)

1 THE COURT: And I am going to bring in  
2 Number 13, Mr. Maurer, to ask what his occupation  
3 was before he was retired.

4 (Mr. Maurer enters the courtroom.)

5 THE COURT: Quick question for you,  
6 Mr. Maurer.

7 PROSPECTIVE JUROR MAURER: Sure.

8 THE COURT: Your occupation, which you  
9 retired -- which you look too young to be retired --  
10 what was it?

11 PROSPECTIVE JUROR MAURER: Auto truck  
12 renting and leasing and also real estate  
13 development.

14 THE COURT: Anything in that business that  
15 exposes you to these debt-collection type issues.

16 PROSPECTIVE JUROR MAURER: Of course.

17 THE COURT: Anything about that experience  
18 that could color your ability to look at this case  
19 fairly for both sides?

20 PROSPECTIVE JUROR MAURER: Probably not.

21 THE COURT: Okay. Probably is going to  
22 make both sides nervous.

23 PROSPECTIVE JUROR MAURER: No.

24 THE COURT: And you're 100 percent sure  
25 about that?

1 PROSPECTIVE JUROR MAURER: I don't know  
2 about 100.

3 THE COURT: Why would it potentially  
4 affect you?

5 PROSPECTIVE JUROR MAURER: Well, it's very  
6 difficult to be in business for yourself for a  
7 number of years and not have positive and negative  
8 encounters with collection agencies.

9 THE COURT: Okay. All right. Let me --

10 PROSPECTIVE JUROR MAURER: I've been on  
11 both sides of the fence.

12 THE COURT: I understand. And just  
13 because the lawyers are entitled to know as much as  
14 they can, let me let them ask you a couple of  
15 questions along those lines with regard to your  
16 position. And Mr. Radbil, if you will speak up,  
17 please.

18 MR. RADBIL: Would you say you've had more  
19 experience on the positive side, on the creditor  
20 side, versus the debtor's side in terms of your  
21 position?

22 PROSPECTIVE JUROR MAURER: Probably as the  
23 creditor.

24 MR. RADBIL: Okay. Do you think that as a  
25 result of the more experience on the creditor's

1 side, you would tend to view that side with some  
2 measure of sympathy above and beyond the debtor  
3 side?

4 PROSPECTIVE JUROR MAURER: I think all of  
5 my experiences on the creditor side leaves me with  
6 mixed emotions. I've had success and failure.

7 MR. RADBIL: Do you think if you were the  
8 plaintiff or the defendant, you would prefer you for  
9 the reason that they may think -- one side or the  
10 other may think?

11 PROSPECTIVE JUROR MAURER: No, no.

12 MR. RADBIL: You think you could be fair?

13 PROSPECTIVE JUROR MAURER: I think so.

14 THE COURT: Okay. Thank you, Mr. Radbil.  
15 Ms. Malone, any questions?

16 MS. MALONE: No, Your Honor.

17 THE COURT: Thank you very much,  
18 Mr. Maurer.

19 PROSPECTIVE JUROR MAURER: You're welcome.

20 (Mr. Maurer exits the courtroom.)

21 THE COURT: Okay.

22 MR. RADBIL: I would move to strike for  
23 cause, Your Honor, on the hesitancy. He doesn't  
24 seem a hundred percent, and he's on the fence about  
25 whether he could be fair. And I think the more

1 experience on the creditor side, given the ambiguity  
2 of the answers, he thinks he could be fair, but he  
3 didn't say, you know, he could be fair I think --

4 THE COURT: I'm sorry. I'm listening to  
5 you, I'm looking at what he said.

6 Ms. Malone?

7 MS. MALONE: Judge, what I heard him  
8 say -- and granted I don't have your magic screen to  
9 double-check -- was that he was pretty even-handed  
10 on both sides and had been through both experiences,  
11 which most folks in business have. And I got the  
12 impression that he would do his best to be fair.

13 THE COURT: I didn't hear enough from him,  
14 even watching his demeanor, to indicate that he came  
15 with a preconceived bias against one side or the  
16 other. I can see what he said, at least initially,  
17 would make anyone nervous, but I don't think he's  
18 disqualified himself.

19 And the answer was no, no, when you asked  
20 him that question about being on one person's jury  
21 as opposed to the other. So I'm going to deny the  
22 request with regard to Mr. Maurer. And if you will  
23 recall, he didn't raise his hand with a question. I  
24 brought him in to find out why he was retired.

25 THE COURT: I think the record is



1 sufficient that he did not indicate that he would be  
2 unfair. Again, he didn't respond in any way to the  
3 several questions of the panel in that regard. And  
4 the issue came up, because we were asking about his  
5 former occupation, and he indicated he was on both  
6 sides favorable and negative.

7 So I'm going to deny him. And his  
8 demeanor didn't indicate to me, as opposed to the  
9 others that did indicate they had some strong  
10 emotional feelings against debt collection  
11 practices, so I deny the request. All right. So I  
12 believe we're at 18. Everyone agree with that?

13 MS. MALONE: Yes, ma'am.

14 THE COURT: Through Ms. Michener. I would  
15 like to give you about 20 minutes to strike your  
16 lists. One side can use the jury room. Please  
17 don't leave anything in there of your own materials.  
18 We will get the jury seated and will break an hour  
19 and 15 minutes for lunch and then start with the  
20 openings.

21 So Mr. Everett, if you will let the jury  
22 take a 15-minute break, we will have them back in  
23 here in 15 minutes.

24 Anything else before we adjourn?

25 MR. RADBIL: I have a few questions

1 regarding openings, particularly with respect to the  
2 pretrial order.

3 THE COURT: Can we do that after we get  
4 the jury seated, because you will not do your  
5 openings until after lunch.

6 MR. RADBIL: Sure.

7 THE COURT: We will cover it, and I will  
8 be asking you how much time you want and we will  
9 talk about that at the time. But if there's nothing  
10 else with regard to the jury selection --

11 MS. MALONE: Other than when we're  
12 finished, do you want us to turn it back in to Rod.

13 THE COURT: Yes.

14 MS. MALONE: Thank you.

15 MR. RADBIL: Thank you, Your Honor.

16 (Recess taken from 11:25 to 11:51.)

17 THE COURT: I've had Mr. Reynolds show you  
18 the jury and there's no mistakes, everyone agrees on  
19 the -- we will bring them in and bring the whole  
20 panel, and I will call them one by one. I will read  
21 a few instructions to them, and then I will send  
22 them on their way. And I would like to start back  
23 up at 1:30, try to give you one hour and 15 minutes,  
24 take that long to get to that appoint. Okay? We  
25 will talk about the openings after that. All right.

1 Let's go ahead and bring them in.

2 (Jury panel in.)

3 THE COURT: As I call your names, the next  
4 seven people, please come forward and bring your  
5 belongings and take a seat in the jury box.

6 Juror Number 1 is Marilyn Parker, Marilyn  
7 Parker; Juror Number 2 is Paul Letot; Juror Number 3  
8 is Reginald Brooks, that's Reginald Brooks; Juror  
9 Number 4 is Karen Fox, that's Karen Fox; Juror  
10 Number 5 is Ribhi Abdeljabar, and I apologize if I  
11 haven't pronounced that correctly; Juror Number 6 is  
12 Mr. Maurer, that's Mr. Maurer; and finally, Juror  
13 Number 7 is Gregory Gaither, Gregory Gaither.

14 Ladies and gentlemen, welcome to the jury  
15 in this case. As I said, we plan to have a brief  
16 trial. Your first order of business, though, is to  
17 swear you in as the jury in this case. So if you  
18 will rise and raise your right hands.

19 (The oath was administered to the jury)

20 THE COURT: All right. Ladies and  
21 gentlemen, please be seated. I'm going to excuse  
22 you for lunch in just a moment.

23 In the meantime, ladies and gentlemen of  
24 the panel, you are excused. Please return back down  
25 to the jury room, and they can give you further

1 instructions. If we can all rise for the jury  
2 panel.

3 (Jury panel excused.)

4 THE COURT: We will go through some brief  
5 instructions. Ladies and gentlemen, you've now been  
6 sworn as the jury to try this case. As the jury,  
7 you will decide the disputed questions of fact. As  
8 the judge, as I have mentioned, I will decide all  
9 questions of law and procedure.

10 From time to time during the trial and at  
11 the end of the trial, I will instruct you on the  
12 laws, rules of law that you must follow in making  
13 your decisions. You don't have to have any  
14 preconceived knowledge of debt collection law or  
15 anything like that. I will provide all of the law  
16 that you need to know and the elements of proof in  
17 that regard when I send you the jury instructions at  
18 the close of the case.

19 After lunch, the lawyers for each of the  
20 parties will make what we call an opening statement.  
21 Opening statements are not evidence. In fact,  
22 nothing that the lawyers say is evidence. They are  
23 simply provided by each side to give you an outline,  
24 a blueprint, help simplify for you what they expect  
25 the evidence will show.

1           After the opening statements, the  
2 plaintiff, who has the burden of proof, will call  
3 witnesses and present evidence. Then the defendant  
4 will have an opportunity to call witnesses and  
5 present evidence.

6           After the party's main case is completed,  
7 there may be, in some cases, rebuttal testimony.  
8 After all of the evidence is completed, the lawyers  
9 will again address you to make final arguments.  
10 Again, the final arguments will conclude what they  
11 believe is their proper view of the evidence, but  
12 again, they are not evidence themselves.

13           Keep an open mind throughout the trial.  
14 That's very important. I have learned that  
15 especially over the years being a judge. Keep an  
16 open mind. Don't decide any facts until you have  
17 heard all the evidence, the closing argument, and  
18 the Court's instruction. I will permit you to take  
19 notes if you need to in this case. Sometimes jurors  
20 like to, sometimes they don't. Just remember your  
21 notes are not evidence, it's the collective  
22 recollection of the jury that is to govern.

23           Until the trial is over, do not discuss  
24 the case with anyone, and don't permit anyone to  
25 discuss the case with you. Every one of you have

1 several people who know that you've been down here  
2 today and where are you and what happened. So  
3 you're going to be calling them to tell them what's  
4 going on. You can tell them about the trial. I do  
5 expect, without question, it will be done before the  
6 end of the week, but please don't give them any  
7 details.

8           Again, all of that matters as far as the  
9 potential as far as us having to start all over again.  
10 Nothing involved in the case can be discussed until  
11 the case is over. Again, that applies to any  
12 outside research, googling, and all the other  
13 things, some of which I am not aware you are capable  
14 of, are out there.

15           If anyone should attempt to discuss the  
16 case with you or approach you concerning the case,  
17 please inform the Court immediately, as the lawyers  
18 have been instructed and the parties hold yourself  
19 completely apart from the people in the case, the  
20 parties, the witnesses, the attorneys, and the  
21 persons associated with them. Even if I see you in  
22 the hall, I will likely try to go the other  
23 direction. Don't take that the wrong way. Because  
24 it's not only important that you be fair and  
25 impartial, but that you appear fair and impartial.

1           You would hate to think that the head  
2 referee, right before the Super Bowl, was going to  
3 dinner with the quarterback. You would kind of  
4 wonder, even if they were just friends, what could  
5 be happening the next day. And even if it was  
6 completely on the level, the appearance of  
7 unfairness could affect your perception of the  
8 fairness of the game. And it's even more so when  
9 you talk about the fairness of our justice system.

10           Again, as I mentioned, don't make any  
11 independent investigation of any fact or matter in  
12 this case. You are to be guided solely by what you  
13 see and hear in this trial, and do not learn  
14 anything about the case from any other source.

15           Your time here is precious. You are  
16 honored guests in this federal courthouse, and we  
17 don't have as many jury trials as we used to. It's  
18 always then an extra honor to have one, to see our  
19 Constitution playing out in reality. And I will and  
20 the lawyers will consider your time of the utmost  
21 importance and try not to inconvenience you. If we  
22 have you for some reason outside the presence of the  
23 court for a discussion, it's about a legal issue  
24 that I can't talk about in front of you. We will  
25 try to make those meetings as quick as possible and

1 get you back out here or start the trial back up  
2 again.

3           You will get some instruction sheets as to  
4 where it is you can go and eat around here. You can  
5 bring food. We have a refrigerator. There's  
6 coffee; should be soft drinks in there. If you want  
7 to bring water out here during the trial, that's  
8 fine as well. We start at nine and go to five. We  
9 usually have about an hour and 15 minutes for lunch,  
10 15-minute breaks or so during the morning and the  
11 afternoon.

12           So give yourself a little extra time when  
13 you try to get here in the morning, because there is  
14 traffic and there are magnetometers that you have to  
15 go through. They are starting to, and I don't know  
16 if they have implemented it yet, trying to get  
17 jurors up to the front of the line. I don't know if  
18 they have started that yet. That's something we  
19 have been trying to get done for years. So just  
20 keep that in mind as you get here so we can start on  
21 time.

22           As I mentioned, the lawyers will start up  
23 the evidence as soon as we get you back here from  
24 lunch, and I am going to break until 1:20. So you  
25 should be able to make your calls and tell everyone



1 where you are, and we will start up here at 1:20.  
2 And as I said, I don't expect this to be a lengthy  
3 case.

4 Thank you all very much for your service.  
5 You will be getting some more information, and feel  
6 free to ask Mr. Everett if you have any questions.  
7 Thank you very much, and we will see you in an hour  
8 and 20 minutes.

9 (Jury leaves courtroom)

10 THE COURT: I'm going to do something a  
11 little different. It's highly unusual for a  
12 prospective juror to say they would rather go to  
13 jail than be on a jury, so I want to talk to  
14 Ms. Strother just briefly. She's out in the  
15 hallway. I'm going to ask Mr. Reynolds if you could  
16 see if she's out there, and we are going to talk to  
17 her for a few minutes and send her on her way.

18 (Ms. Strother enters the courtroom.)

19 THE COURT: Ms. Strother, if you will come  
20 back up here to the microphone.

21 Ms. Strother, I think in all my years of  
22 doing this I have never had a juror come back after  
23 they had been excused, but I was so troubled to hear  
24 you say you would rather go to jail than serve on a  
25 jury. I'm trying to figure out why, what would be

1 the reason that you would rather go to jail than  
2 serve on a jury.

3 PROSPECTIVE JUROR STROTHER: Not really, I  
4 wouldn't. No disrespect. I got -- I just got too  
5 much going on.

6 THE COURT: So it's because you are busy.

7 PROSPECTIVE JUROR STROTHER: Not just  
8 busy. I just don't want to be no judge, no jury.

9 THE COURT: The concern is, as you might  
10 imagine, is occasionally we get people in here who  
11 have been told or figure out if they say enough like  
12 that they get off the jury.

13 PROSPECTIVE JUROR STROTHER: No, ma'am.

14 THE COURT: Well, it's hard to believe  
15 that. I mean, it's very disturbing to think that  
16 someone would take something so important as their  
17 rights under the law and serving on a jury in a way  
18 where you are just too busy and you're going to tell  
19 the judge you can't be fair and just get off the  
20 jury, because that's really what it looks like.  
21 It's of great concern to me that that's what you are  
22 doing.

23 PROSPECTIVE JUROR STROTHER: Like I say, I  
24 just don't want to be a juror, no judge.

25 THE COURT: Have you ever been on a jury?

1 PROSPECTIVE JUROR STROTHER: I don't want  
2 to make no decisions for nobody. It's hard enough  
3 making my own.

4 THE COURT: Have you ever been on a jury?

5 PROSPECTIVE JUROR STROTHER: No.

6 THE COURT: Have you ever had anyone in  
7 your family involved in a case that involved a jury?

8 PROSPECTIVE JUROR STROTHER: Oh, yeah. I  
9 have four brothers in the penitentiary.

10 THE COURT: Is that part of this?

11 PROSPECTIVE JUROR STROTHER: Could be. I  
12 just -- I don't want to blame it on nothing, I just  
13 don't want to be here.

14 THE COURT: Because if you refused to  
15 serve on a jury, you could be in contempt of court,  
16 you understand that.

17 PROSPECTIVE JUROR STROTHER: I'm not  
18 trying to do that. What can I say?

19 THE COURT: Well, I just hope that this  
20 isn't going to end up with you going back and  
21 telling friends that you got yourself off of a jury  
22 by standing up to the judge and saying you couldn't  
23 serve on a jury, that you would go to jail.

24 PROSPECTIVE JUROR STROTHER: No.  
25 Actually, I don't know nobody that's ever been

1 called.

2 THE COURT: Ms. Strother, I am having a  
3 hard time believing you, but you are excused from  
4 the jury. But I hope in the future as you leave  
5 here that you will consider how important our jury  
6 system is. And I hope that this is not the topic of  
7 some conversation with you and your friends about  
8 how you got yourself off a jury, because that would  
9 be a real tragedy. I'm going to have you wait until  
10 the rest of the jury gets out of here and let you  
11 go. I will direct you not to say anything to any of  
12 them. If you do, you will be in contempt of court  
13 and then you will be back here. All right?

14 PROSPECTIVE JUROR STROTHER: Yes, ma'am.

15 THE COURT: All right. You are excused.

16 (Ms. Strother exits the courtroom.)

17 THE COURT: Briefly, how much time do you  
18 want for opening?

19 MR. RADBIL: No more than --

20 THE COURT: I'm not talking to you like I  
21 was talking to her. We're off that topic now. This  
22 is a very serious issue for me. We have it happen  
23 every once in a while, and I just wanted to find out  
24 where she was coming from.

25 Okay. That doesn't mean your time has to

1 be any shorter or longer than you planned, so what  
2 are you asking for?

3 MR. RADBIL: It depends with the questions  
4 I had about the pretrial order, because some of the  
5 things and elements I think are established, so I  
6 don't think there's any need to prove, for example,  
7 that they are a debt collector because summary  
8 judgment has been granted under the --

9 THE COURT REPORTER: Excuse me. Would you  
10 please come up to the mic. I'm having a very hard  
11 time hearing you.

12 THE COURT: You're going to have to speak  
13 up during this trial. Pull it close to you, please.

14 MR. RADBIL: I apologize. I'm trying to  
15 save my voice.

16 THE COURT: Go ahead.

17 MR. RADBIL: The summary judgment has been  
18 granted under the FDCPA and TCPA on two claims. And  
19 that requires a finding as a matter of law that they  
20 are debt collectors, the defendant, and that the  
21 plaintiff is a consumer and that the debt we're  
22 dealing with is a consumer debt. And eliminating  
23 the requirement to reprove those elements at trial  
24 with respect to the same parties and the same debt I  
25 think would streamline the process. So --

1           THE COURT: So what is it that you are  
2 planning to say?

3           MR. RADBIL: Well, the -- I would say the  
4 defendants are debt collectors, the plaintiff is a  
5 consumer, the statutes apply, and the Court has  
6 determined that two provisions of each statute have  
7 been violated --

8           THE COURT: Okay. No, that's not  
9 appropriate for opening statement. There are many  
10 cases where a legal determination is made by the  
11 Court via summary judgment that ultimately may find  
12 its way into the Court's instructions so that they  
13 are not deciding an issue that's already been  
14 determined by the Court. But to indicate the Court  
15 has made decisions is inappropriate for the lawyers  
16 to make to the jury, particularly during opening  
17 statement. So I won't let you go into that on  
18 opening statement.

19           MR. RADBIL: Okay. So then, regarding the  
20 elements, can we do away with some of the -- I don't  
21 see any need to reprove the elements that have been  
22 decided as a matter of law.

23           THE COURT: Let me just hear what  
24 Ms. Malone has to say about this.

25           MS. MALONE: Your Honor, if the only thing

1 that he is asking is if my client is a debt  
2 collector and that his client is a consumer and that  
3 this is a consumer debt, if those are the only three  
4 elements he's asking, at this point we could  
5 stipulate to those. I don't think we actually even  
6 objected to those.

7 THE COURT: How about this: Rather than  
8 talking about what the Court did, you could say that  
9 it's undisputed, these three things.

10 MS. MALONE: These three things only.

11 THE COURT: Be careful that you say only  
12 those three.

13 MR. RADBIL: Additionally, Your Honor --

14 THE COURT: Are we square on this first  
15 one? Do you understand that?

16 MR. RADBIL: Debt collector, consumer,  
17 yeah, and consumer debt. So the acts apply.

18 THE COURT: I'm sorry? You're going to  
19 have to speak up.

20 MR. RADBIL: The acts apply.

21 THE COURT: Closer to the microphone.

22 MR. RADBIL: The statutes at issue are  
23 applicable, so there is no question about that.

24 THE COURT: What is it you want to say? I  
25 just told you you could say those three things were

1 not disputed. So what else do you want to say?

2 MR. RADBIL: I would like to also say  
3 regarding -- one moment -- that the defendant does,  
4 in fact, possess and use an automatic telephone  
5 dialing system as defined by the TCPA as provided  
6 for in the pretrial order.

7 THE COURT: I don't think that's  
8 undisputed.

9 MS. MALONE: That is absolutely disputed,  
10 Your Honor.

11 THE COURT: It's not undisputed.

12 MR. RADBIL: Defendant's contentions, Your  
13 Honor, state, defendant contends that the vast  
14 majority of its calls were made manually. In fact,  
15 only three calls were made engaging --

16 THE COURT: It's not undisputed. It's not  
17 undisputed, so you can't say that it's a fact.  
18 Okay? I disagree with you. I will let you make a  
19 record on it. But right now I want to get to  
20 framing up this opening argument. You can't say  
21 that what you just asked me to say.

22 MR. RADBIL: Okay. And then with respect  
23 to the -- what's Your Honor's position on discussing  
24 the elements of the claims?

25 THE COURT: This is what opening statement



1 is supposed to be. It's supposed to be a prediction  
2 of what you think the evidence will show. It's not  
3 supposed to be arguments. If you say that the  
4 plaintiff has brought these causes of action against  
5 the defendant and talk about just generally what  
6 they are and then talk about what factual proof  
7 you're going to be bringing to prove that, you would  
8 confuse them if you were to start to talk about the  
9 law and the elements, which is something that you  
10 can talk about once we get the jury instructions,  
11 they will be in the jury instructions, and you can  
12 talk about at closing. But I think you're going to  
13 confuse them if you try to get into the elements.

14 So talk about the statutes if you would  
15 like. Talk about the factual proof that you expect  
16 will establish those, and that's basically the  
17 purpose of an opening statement.

18 MR. RADBIL: The one problem I do see with  
19 that approach is that liability has been established  
20 as to certain claims, but damages have not been  
21 established in terms of statutory damages for those  
22 claims.

23 THE COURT: Ms. Malone.

24 MS. MALONE: Your Honor, I don't think  
25 it's appropriate for him to tell the jury liability

1 has been established.

2 THE COURT: Right, it's not.

3 MR. RADBIL: So how do I talk about the  
4 other claims, because it's not appropriate to say  
5 that it has not been established.

6 THE COURT: Well, it's not something to be  
7 talking really about in opening. Again, where this  
8 has come up in the past is where the Court has made  
9 some determination as a matter of law that does  
10 impact the elements submitted to the jury for their  
11 decision.

12 Normally the Court will say in the charge,  
13 this particular issue has been resolved, and it's  
14 not for you to decide. But I think you're getting  
15 very hypertechnical at this point.

16 Again, what is it factually you are going  
17 to bring? I won't let you say it's been established  
18 as a matter of law. Okay? You can't.

19 MR. RADBIL: Right. So then are we  
20 required to re-present evidence of violations that  
21 have been established?

22 THE COURT: No. You're talking about what  
23 you can say in your opening statement. I'm not  
24 going to tell you what you do and don't need to  
25 bring forward at this point and combine myself in

1 some fashion to something that, from our experience  
2 so far, could be confusing. We may not have the  
3 same perception of what I am saying. But your  
4 opening statement is not the place to do that. So  
5 that's really all we are talking about right now.

6 MR. RADBIL: I don't want to run afoul in  
7 the opening statement.

8 THE COURT: Just don't say anything that  
9 the Court has already decided or it's already been  
10 established. You can say on those points where it's  
11 agreed and stipulated, there is no dispute that this  
12 is correct, this has occurred, whatever those three  
13 things are that you mentioned.

14 MR. RADBIL: That consumer defendant or  
15 consumer debt collector and consumer debt. But I  
16 don't know how to tell the jury about the claims  
17 that have been decided without talking about what  
18 the evidence would show.

19 THE COURT: You can't do that, if you and  
20 Ms. Malone want to confer and come to some  
21 agreement. But you can't talk about what's already  
22 been established by the Court or a Court ruling, you  
23 can't do that. So I'm not sure how to advise you  
24 otherwise, without putting the Court in a position  
25 that you could come back later and tell me that I

1 told you something that I disagree I told you.  
2 Opening statement is not evidence, it's to predict  
3 what the evidence will show. That's as much as I  
4 can give you right now. Go ahead and talk to her,  
5 and we will see you back here at 1:20.

6 How much time do you want?

7 MR. RADBIL: No more than 15 minutes.

8 THE COURT: Okay.

9 MS. MALONE: I'm a fast talker, Judge; ten  
10 minutes is fine.

11 THE COURT: No more than 15 minutes each.  
12 We will be in recess. See you at 1:20.)

13 (Court in recess from 12:15 to 1:20.)

14 (Out of the presence of the jury.)

15 THE COURT: Let's quickly make sure we are  
16 on the same page about this. Have you had a chance  
17 to talk at all about some of the questions on  
18 opening by the plaintiff, Mr. Radbil?

19 MR. RADBIL: I attempted to, but I didn't  
20 get very far.

21 THE COURT: Okay. So it seems to me, just  
22 so that we're clear, again, you can't say that the  
23 Court has found in favor of your client in your  
24 opening statement nor can it be referenced during  
25 the trial.

1           It will be clear that they won't be able  
2 to, in the instructions, do anything but assess or  
3 decide damages on those claims that have already  
4 been decided in your favor. But I just want to make  
5 sure that there is no confusion about that.

6           You can talk about what these different  
7 statutes require. You can talk about what you plan  
8 to prove. You can talk about the fact that you are  
9 asking for damages. But just no confusion in regard  
10 to -- you can't talk about what's been decided by  
11 the Court. All right?

12           MR. RADBIL: I am confused still, though,  
13 as to what I need to prove with things that have  
14 already been decided.

15           THE COURT: Well, I think you have to  
16 prove the damages with what has already been  
17 decided, but that's different from what you can tell  
18 the jury. I mean --

19           MR. RADBIL: I follow that. But in terms  
20 of, for example, playing a recording that  
21 constituted a violation, I don't see that that would  
22 be necessary.

23           THE COURT: See, here's the issue, I  
24 think, that maybe you are getting too  
25 hypertechnical. There's a body of facts here that

1 underlie your client's claims. I'm going to be  
2 surprised if they are discrete from each other to  
3 the sense where you're carving out those ones that  
4 you want to show liability on and not those that you  
5 have already been -- liability has been determined,  
6 because we're essentially talking about phone calls  
7 and this kind of a thing that occurred over a period  
8 of time.

9 I'm assuming that you're planning to offer  
10 this body of facts that surround the case. And I  
11 wouldn't sustain an objection from defense if you're  
12 asking to bring proof on something that's already  
13 been decided because I think it's necessary to show  
14 context.

15 You're not going to get a directed verdict  
16 for not proving claims that have already been  
17 established. It's just what you can talk about in  
18 front of the jury, and that's about as good as I can  
19 do. Anything else?

20 MR. RADBIL: Can I read the statutory text  
21 of the provisions that have already been decided as  
22 violations?

23 THE COURT: For what purpose?

24 MR. RADBIL: To show that that behavior  
25 has been engaged in.

1           THE COURT: No. I'm not sure why you need  
2 to read the statute at this point. I am also not  
3 used to having these kinds of conversations at this  
4 point in the case or any point in a case, let alone  
5 five minutes after the jury is supposed to be back  
6 out here.

7           Mr. Radbil, that's the best I can tell  
8 you. This is stuff that you should already know.  
9 We shouldn't be having these conversations. If you  
10 are confused and there is an objection, I will  
11 sustain it if you go off from what I have instructed  
12 you. Let's go ahead and bring the jury in.

13           (Jury enters the courtroom)

14           THE COURT: Ladies and gentlemen, please  
15 be seated. We are going to go ahead, as I  
16 mentioned, with the opening statements. The  
17 plaintiff has the burden of proof. So Mr. Radbil,  
18 go ahead.

19           MR. RADBIL: Thank you, Your Honor.

20           MR. RADBIL: Ladies and gentlemen, thank  
21 you for your time and being here today. Everybody  
22 appreciates your service. As you know, this is my  
23 client, Dr. White. This lawsuit is not probably  
24 going to be the most thrilling that you have ever  
25 heard of, but it's important to Dr. White. This

1 case involves student loans and attempts to collect  
2 them by a debt collector, Regional Adjustment  
3 Bureau, the defendant.

4 THE COURT: You're going to have to speak  
5 up, Mr. Radbil. Even I can't hear you, so pull it  
6 closer to you.

7 MR. RADBIL: Pardon me.

8 THE COURT: Could you move closer to it?

9 MR. RADBIL: Certainly.

10 THE COURT: Thank you.

11 MR. RADBIL: The evidence will show that  
12 Dr. White took out certain student loans to finance  
13 parts of his education and that he defaulted on  
14 those loans. And in an attempt to collect those  
15 loans, the defendant, who is a debt collector,  
16 violated a federal act known as the Fair Debt  
17 Collections Practices Act, which is designed to  
18 protect consumers against false, deceptive,  
19 misleading, and harassing tactics.

20 There is a state analog called the Texas  
21 Debt Collection Act which tracks the federal act  
22 pretty closely. So most of the same violations of  
23 the federal act also constitute violations of the  
24 Texas act.

25 The facts of this case are fairly



1 straightforward. Both acts require that when you  
2 place calls to a consumer, you must provide  
3 meaningful disclosure of the caller's identity and  
4 you must state the communication is from a debt  
5 collector.

6 In this case the evidence will show  
7 neither of those things were done. And  
8 additionally, the federal act prohibits a debt  
9 collector from contacting a consumer's place of  
10 employment without the prior express consent of the  
11 consumer. For good measure, because nobody wants to  
12 be hounded with debt collection calls in the first  
13 place, but certainly not at their workplace. In  
14 this particular instance --

15 MS. MALONE: Your Honor, I'm sorry that's  
16 not accurate.

17 THE COURT: Overruled. This is not  
18 evidence, ladies and gentlemen. If you will go  
19 ahead. And again, this is what the lawyers expect  
20 the evidence to show, and it's not evidence. Go  
21 ahead. Let's move ahead.

22 MR. RADBIL: Thank you. So Dr. White had  
23 loans, they were in default. There was attempts to  
24 collect them by the defendant, and the defendant did  
25 things that are unlawful. It's not unlawful to

1 engage in debt collection in Texas. You can  
2 certainly do it. It's a profitable business, and  
3 there's many, many debt collection companies. In  
4 fact, there's almost as many lawyers who participate  
5 in collecting debts as there are nonlawyers  
6 collecting debts.

7 But if you do participate in the business  
8 of debt collection in Texas, you must comply with  
9 the federal act, and you must comply with the state  
10 act. And these are strict liability statutes, so  
11 one violation is enough to establish liability. And  
12 under the federal act and the state act, you can  
13 recover actual damages and statutory damages.

14 The biggest aspect of this case, and the  
15 predominant reason that we have waited so long to  
16 come to trial, is Dr. White has suffered legitimate  
17 actual damages. You're going to hear his testimony.  
18 And the facts are going to show that over the course  
19 of a limited period of time, multiple calls were  
20 placed to his employer and his place of employment,  
21 despite the fact that Dr. White requested no more  
22 calls be placed to his employer and place of  
23 employment.

24 Dr. White, as a result, was concerned that  
25 he would be terminated as a result of receiving

1 those calls to his place of employment. And if he  
2 was terminated, his only source of income while he  
3 was working on his Ph.D would disappear.

4           Meanwhile, he's trying to negotiate  
5 repayment plans with the lender, and he was making  
6 payments and has continued to make payments. He's  
7 worked very hard for where he's gotten to date. And  
8 the prospect of being terminated and not being able  
9 to make any payments would cause him to face the  
10 possibility of not being able to practice  
11 psychology, which he had worked for for a number of  
12 years, as you will hear.

13           It's been a long road for Dr. White to get  
14 to the point where he can be licensed to practice in  
15 the State of Texas. He was faced with the prospects  
16 of losing everything every day. He would be waiting  
17 for the call from his employer saying, we can't have  
18 you work here anymore, or, you violated, you know,  
19 the policy or used our work lines for personal  
20 calls.

21           He could not have these calls at work.  
22 And he will elaborate, of course, but the  
23 consequences were severe. And despite his repeated  
24 requests, the calls to his place of employment  
25 continued. So he was put in a position of constant

1 worry about not only his only source of income but  
2 about the possibility of never being able to use his  
3 degrees and his license to practice in the State of  
4 Texas.

5 And there were false threats made by the  
6 debt collector in this case to strip him actually of  
7 his Ph.D before he had earned it, among various  
8 other threats. Both the federal and the state act  
9 prohibit false representations, false threats of  
10 actions that can't be legally taken and so forth.

11 This is, I think, one of the most basic  
12 situations that these statutes were designed to  
13 address, which is --

14 THE COURT: Mr. Radbil, we need to have  
15 you focus on where the facts are going to go and not  
16 on argument. All right?

17 MR. RADBIL: Certainly. I don't want to  
18 do too much more talking. The facts are not overly  
19 complex. The statutes are simple, they are  
20 straightforward. So I do thank everybody for their  
21 time.

22 All that I request is you listen to  
23 Dr. White's testimony. You are obviously the judge  
24 of the facts of the case. So he will testify, and  
25 you will ultimately be asked to decide whether he

1 was damaged and in what amount, and that question is  
2 completely yours to answer. I'm only here to  
3 present the facts to you, so that's what I'm going  
4 to try to do.

5 Again, not the most exciting thing, but  
6 something that Dr. White takes very seriously. So  
7 we would appreciate you listening carefully, and  
8 with that I will close. Thank you again.

9 THE COURT: Thank you, Mr. Radbil.  
10 Ms. Malone.

11 MS. MALONE: Thank you, Your Honor.

12 I disagree. My 25-year-old son would tell  
13 me that's a dumb moment. I don't really need to  
14 tell you that, because I wouldn't be standing here  
15 if I agreed with what Mr. Radbil had to say. I'm  
16 not going to go through everything he said, because  
17 you will hear the evidence on it.

18 THE COURT: Slow down just a little bit.

19 MS. MALONE: I'm sorry, Judge.

20 THE COURT: Everybody does it.

21 MS. MALONE: The fact of the matter is,  
22 the law says that you can call someone's employer at  
23 their place of employment unless they tell you they  
24 can't have telephone calls there or you are given  
25 some reason to believe that's the case.

1           In this situation, the telephone that was  
2 being called is not for his actual employer, it was  
3 for a company that he was doing contract work for.  
4 You will also hear the reason he didn't want calls  
5 was because he couldn't answer the phone because it  
6 would ring to his cell phone to let him know that  
7 there was a message for him. So listen to that,  
8 folks. It's very important.

9           This brings to me to kind of a Paul Harvey  
10 statement. I used to tell people about how Paul  
11 Harvey does. You may remember, he used to say, and  
12 now, the rest of the story. And I used to say that  
13 all the time in opening. And then a couple of years  
14 I noticed that all the jurors were too young to know  
15 who Paul Harvey was. But thanks to the Super Bowl  
16 this year, he is back. And this is one of those  
17 moments where I encourage you folks to hear the rest  
18 of the story.

19           You will hear testimony or argument from  
20 the plaintiff's side. Wait until you hear the other  
21 side before you make up your mind. The reason I  
22 bring that up is a very good chance that I may not  
23 put on any evidence in my case at all. It may just  
24 all flow through one witness to help save time and  
25 help you guys move along. And so don't assume

1 anything until you have heard the whole story and  
2 make the decision.

3 I will tell you what I think some of the  
4 facts in the evidence will be. The evidence will be  
5 that Mr. White did, in fact, take student loans out  
6 to pay for two college degrees, an undergraduate  
7 degree and a master's degree. And with those  
8 degrees, he obtained a licensed professional  
9 counseling license for the State of Texas.

10 He then went to work, and he worked for a  
11 long time. During that period of time, he defaulted  
12 on those loans. And the State of Texas, who had  
13 guaranteed those loans, paid them. The State of  
14 Texas, through their agency, the Texas Guaranteed  
15 Students Loans, hired my client to help get that  
16 money back.

17 When you default on a student loan, I  
18 believe the evidence will be, are there  
19 consequences? For example, the state can withhold  
20 your degree, and they can withhold your license. If  
21 you are a lawyer or a doctor or a counselor, you  
22 don't get to practice in the State of Texas if you  
23 don't pay the money back to the State of Texas.  
24 It's that simple.

25 I will submit to you, that's really what

1 Mr. White was upset about. I believe the story you  
2 will hear is that in two phone messages, which were  
3 return calls from a debt collector, the person  
4 identified who they were and who they worked for and  
5 didn't say, I'm a debt collector. These were return  
6 calls. I would submit to you that really didn't  
7 upset Mr. White. The consequence or facing the fact  
8 that he could lose his license, that was what was  
9 the cause of his panic and his upset.

10 You will hear some testimony about  
11 something that's called an auto dialer. There's  
12 going to be a big dispute about whether or not it  
13 meets some statutory definition, and we're going to  
14 say it doesn't. But at the end of the day, folks,  
15 it doesn't really matter, because in this case, my  
16 client called manually. That means they picked up a  
17 phone and dialed Mr. White's cell phone number. The  
18 law allows you to make a manual call to a cell  
19 phone.

20 It's not unlike me. In my office, I have  
21 a computer. I'm an old school attorney. I can  
22 promise you, I use way more yellow pads and pens  
23 than I do the computer.

24 In the debt collection industry, very  
25 often they make manual calls because, if you are



1 calling a cell phone, you have to be careful.  
2 You're going to hear that testimony. At the end of  
3 the day, remember, it is their burden of proof to  
4 show that they were not manually made. And I will  
5 submit to you there will be no evidence on that.

6 There's really more to this story, but the  
7 truth of the matter is, it's going to unfold here.  
8 And at the end of the day, you are the final judges  
9 of both the facts and the credibility of the  
10 witnesses. It's kind of like the Paul Harvey story,  
11 you get to write the final chapter.

12 THE COURT: Thank you, Ms. Malone.

13 Let's go ahead and have you call your  
14 first witness, Mr. Radbil. And if you would not  
15 mind turning the lectern around so it faces the  
16 proper way.

17 Who is your first witness?

18 MR. RADBIL: First witness will be Robert  
19 Wyatt in his individual capacity.

20 THE COURT: Mr. Wyatt, if you will come  
21 over here and watch for any wires on the floor as  
22 you come, please. And if you will stop for a moment  
23 and raise your right hand.

24

25

1                               **ROBERT F. WYATT,**  
2       having been first duly sworn, testified as follows:

3                               **DIRECT EXAMINATION**

4       Q.     (By Mr. Radbil)   Good afternoon, Mr. Wyatt.

5       A.     Good afternoon, Mr. Radbil.

6       Q.     Could you please state your name for the record  
7       in full?

8       A.     Yes, sir.   Robert F. Wyatt.

9       Q.     Are you currently employed?

10      A.     Yes, sir.

11      Q.     And you work for Regional Adjustment Bureau; is  
12      that correct?

13      A.     That is correct.

14      Q.     Could you state the capacity, please, in which  
15      you work?

16      A.     Yes.   I am the Director of Compliance in Human  
17      Resources.

18      Q.     Okay.   And you and I have met on the phone once  
19      before I believe; is that correct?

20      A.     Yes, sir, we have talked on the phone.

21      Q.     Do you agree that Regional Adjustment Bureau --  
22      and if I may refer to Regional Adjustment Bureau as  
23      RAB for convenience sake?

24      A.     Yes, sir, that's fine.

25      Q.     (By Mr. Radbil)   -- placed no less than 17

1 telephone calls to Dr. White's work telephone line  
2 in an effort to collect a consumer debt from  
3 Dr. White?

4 A. What was that, sir?

5 Q. Do you agree that 17 phone calls were placed to  
6 the main telephone number of Dr. White's employer?

7 MS. MALONE: Your Honor, I'm going to  
8 object; assumes facts not in evidence.

9 THE COURT: Overruled, but I would like  
10 for you to give a time frame there.

11 THE WITNESS: I'm not sure how many calls  
12 were made, sir.

13 THE COURT: Wait for another question.  
14 I'm going to have him direct you to a time frame.

15 MR. RADBIL: Seventeen times in 59 days.

16 THE COURT: In what year?

17 MR. RADBIL: I believe it was 2011.

18 THE COURT: Okay.

19 THE WITNESS: I would have to count the  
20 calls. I'm not sure of the number, sir.

21 MR. RADBIL: Okay. At this time, Your  
22 Honor, we would like to introduce Plaintiff's  
23 Exhibit 6, which has been agreed to.

24 THE COURT: If you want to show that to  
25 him, Plaintiff's Exhibit 6, that's fine. It's been

1 previously admitted.

2 Ms. Malone?

3 MS. MALONE: Your Honor, are we marking on  
4 admitted exhibits with a highlighter?

5 THE COURT: Mr. Radbil?

6 MR. RADBIL: We have several copies so  
7 that we can admit one, and for his convenience he  
8 can highlight if he needs to. If not, he can just  
9 count.

10 THE COURT: All right. This is  
11 Plaintiff's Exhibit 6. I will allow you to  
12 highlight it. Go ahead.

13 THE WITNESS: All right, sir.

14 THE COURT: With the understanding that  
15 the substitution of what was preadmitted will be  
16 what we give to the jury.

17 MR. RADBIL: Yes, Your Honor.

18 THE COURT: Okay. Go ahead.

19 THE WITNESS: Do you want me to highlight  
20 which of them, sir?

21 MR. RADBIL: (866)417-8776.

22 THE WITNESS: Yes, sir.

23 THE COURT: Mr. Radbil, I will ask you to  
24 approach and make sure we are almost to the  
25 conclusion of this. Okay. Would you please?

1 MR. RADBIL: Sure.

2 He's close.

3 THE COURT: Okay. Mr. Radbil?

4 Q. (By Mr. Radbil) What was your count, sir?

5 A. Let me count those. I'm sorry, I didn't count  
6 them, I just highlighted them. Seventeen, sir.

7 Q. Thank you. And on the top of the account  
8 notes, there is certain information contained about  
9 Dr. White and his account; is that correct?

10 A. Yes, sir.

11 Q. And that information is the basic type of  
12 information that a debt collector would need, for  
13 example, contact information, telephone numbers,  
14 place of employment, date of birth, city, state, zip  
15 code, et cetera?

16 A. Yes, sir.

17 Q. Okay. And on the right-hand column there is a  
18 list of phone numbers. The first one is  
19 (214) 792-9650.

20 A. Yes, sir.

21 Q. Okay. The second says, RP.

22 A. Yes, sir.

23 Q. PH (281) 435-1163-C.

24 A. Yes.

25 Q. Can you interpret what that means?

1 A. The 1163 number?

2 Q. Correct?

3 A. That's a cell phone number.

4 Q. What indicates it's a cell phone number?

5 A. Sir?

6 Q. The indication of it being a cell phone is the  
7 C?

8 A. That's correct.

9 Q. And below that POE, what does that stand for?

10 A. Place of employment.

11 Q. Can you read the number listed there?

12 A. (866) 417-8776.

13 Q. Okay. And then to the left of that, there is  
14 another POE category, which I presume stands for  
15 place of employment; is that correct?

16 A. Where are we looking, sir?

17 Q. So the POE number that you just read, if you go  
18 straight to the left --

19 A. That's -- you meant name of the place of  
20 employment?

21 Q. Yes.

22 A. Yes, sir.

23 Q. Can you read the name of the place of  
24 employment?

25 A. Simple Surrogacy.

1 Q. And the address?

2 A. Address, 4925 Greenville Avenue, Dallas, Texas  
3 75206.

4 Q. And down below there is a time listed. And it  
5 says, Time 388, what does that mean?

6 A. That's the number of seconds that someone was  
7 on the account.

8 Q. 388 seconds total?

9 A. Yes. Um-hum.

10 Q. Does that mean on the account, working on it,  
11 or does that include phone calls?

12 A. You could be sitting on the account doing  
13 nothing, and it would still show that time.

14 Q. If I made a phone call, would that be included  
15 in that time?

16 A. Yes.

17 Q. Okay. And in 388 seconds, how many calls were  
18 made according to this document?

19 A. According to this, 70 calls it says.

20 Q. Okay. And C-O-N means?

21 A. Number of contacts.

22 Q. And how many?

23 A. Four.

24 Q. Okay. The asterisk on the top near the  
25 CVRPH214 number, the telephone number is

1 (214) 792-9650?

2 A. Yes, sir.

3 Q. And it has an asterisk by it?

4 A. Right.

5 Q. What does that asterisk stand for?

6 A. That usually indicates that it's a cell phone  
7 number that we have received permission -- or a  
8 telephone number that we have received permission to  
9 call.

10 Q. So in this instance, because the cell phone  
11 number delineated by the C, which is the 1163  
12 number, does not have an asterisk by it --

13 A. That is correct.

14 Q. -- there was no permission to call that number.

15 A. That's correct.

16 Q. Now, the total number of calls documented is  
17 70.

18 A. Yes.

19 Q. But if I recall correctly, during your  
20 deposition testimony we counted the number of calls  
21 and there was actually more calls than the 70  
22 indicated here; is that correct?

23 A. That's my recollection, yes, sir.

24 Q. Okay. So there's some chance that things are  
25 not accurate in these account notes?



1 A. That the number of calls were not being  
2 accurate.

3 Q. Okay. Is there a reason or an explanation why  
4 the number would be inaccurate as far as number of  
5 calls?

6 A. This is information that's input a lot of times  
7 by collectors. Our dialing will also go out and  
8 call a number of calls and drop off the calls that  
9 are not reached.

10 Q. So --

11 A. It's not unusual for this number to be off.

12 Q. Okay. Because there's some chance that a  
13 dialer calls a number many times and doesn't connect  
14 and that call is not logged actually --

15 A. Right.

16 Q. -- on these account notes.

17 Same way that a call that's not answered by  
18 somebody's cell phone, for instance, might not show  
19 up on their bill because they didn't pick up.

20 A. We attempted to call, right.

21 Q. How long have you worked for Regional  
22 Adjustment Bureau?

23 A. Thirty years.

24 Q. Thirty years?

25 A. Yes, sir.

1 Q. Could you state your position? I don't recall  
2 if I asked you your position.

3 A. What was that, sir?

4 Q. What's your position in the company?

5 A. I am the Director of Compliance in Human  
6 Resources.

7 Q. Okay. Regarding calls to the place of  
8 someone's employment --

9 A. Yes, sir.

10 Q. -- what is the policy of Regional Adjustment  
11 Bureau, to your personal knowledge?

12 A. That we can call -- we can call the place of  
13 employment unless we are told that it's an  
14 inconvenient time or place or if we have reason to  
15 know that calls cannot be received at that number.

16 Q. Do you dispute -- let me back up a step. Do  
17 you agree that Regional Adjustment Bureau, RAB, is  
18 required to disclose in voice messages that it  
19 leaves with consumers that it's a debt collector?

20 A. We are required to do that.

21 Q. Do you agree in this case that that was not  
22 complied with?

23 A. I have no way of knowing that, sir. I know  
24 what the collectors are trained to do, and that's to  
25 leave that message.

1 Q. Have you done anything since the inception of  
2 this case to -- well, have you learned anything from  
3 the facts of this case?

4 THE COURT: Excuse me.

5 MS. MALONE: Your Honor, objection, calls  
6 for attorney-client communication.

7 THE COURT: Sustained.

8 Q. (By Mr. Radbil) Would you agree that placing  
9 calls to somebody's employment's telephone number or  
10 place of employment could potentially cause  
11 significant problems for that individual?

12 A. That would depend on where the individual  
13 worked, I would imagine, what those company's  
14 policies are towards the individuals receiving calls  
15 at work.

16 Q. Would you agree if someone was not allowed to  
17 use their business line for personal calls or to  
18 take nonbusiness-related calls, that that could  
19 cause a serious problem? You're a manager, and so  
20 there's -- there's things that you want your  
21 employees to do and things your employees cannot do.

22 A. I guess you would have to know the company's  
23 policies in order to be able to answer that  
24 question.

25 Q. Uh-huh. What exactly do you teach your

1 employees -- well, how do you teach them how to  
2 comply with the restrictions under federal law  
3 related to placing calls to employment? Is there a  
4 written policy?

5 A. We have a printed program that we put our  
6 employees through. And part of that training  
7 program is on the Fair Debt Collection Practices  
8 Act. I can go into a little bit of the training if  
9 you would like me to.

10 Q. Specifically with respect to telephone calls  
11 placed to places of employment, please.

12 A. Places of employment. I answered that earlier.  
13 I will be glad to answer that again, sir. We're  
14 allowed to call a place of employment unless we are  
15 told that it's an inconvenient time or place or if  
16 we have reason to believe that those calls would not  
17 be allowed by that particular employer. It could be  
18 in the case of someone who is on a production line  
19 and would have to be called off and would interrupt  
20 the flow of business.

21 Q. Um-hum. Do you dispute in this case the fact  
22 that Dr. White requested that calls to his place of  
23 employment from Regional Adjustment Bureau stop?

24 A. I have no record of him making such a request,  
25 no, sir.

1 Q. When you talk about records, what records are  
2 you looking at?

3 A. The employee notes; these account notes right  
4 here.

5 Q. And how are employees compensated based on  
6 their work at RAB?

7 A. They are paid a straight salary plus a  
8 commission based on what they collect. If they  
9 reach a certain goal, then they can make additional  
10 money.

11 Q. And are they assigned a particular group of  
12 accounts, or is it random?

13 A. They are assigned to different divisions within  
14 the company. It could be the Retail Division or the  
15 Student Loan Division.

16 Q. So would an employee have an interest  
17 financially in not noting an account relating to a  
18 request to stop calling a place of employment lodged  
19 by a consumer?

20 A. That could cause legal issues, and I don't know  
21 that that would be a monetary incentive for anybody  
22 to do that.

23 Q. Well, what's the purpose of calling somebody's  
24 place of employment?

25 A. To talk with them about their delinquent debt.

1 Q. And you can talk to somebody about their  
2 delinquent debt at their home telephone number also,  
3 correct?

4 A. Correct.

5 Q. Um-hum. So do you say it's more effective or  
6 less effective if you can call more phone numbers?

7 A. If you can call what, sir?

8 Q. More telephone numbers.

9 A. More telephone numbers?

10 Q. Uh-huh.

11 A. The whole purpose of it is to be able to talk  
12 to the individual that you are trying to reach. So  
13 as far as how many telephone numbers that requires,  
14 I would assume that would vary. Again, the sole  
15 purpose is trying to reach the individual you are  
16 trying to reach so you can arrive at a solution to  
17 the collection problem.

18 Q. Do collectors suffer any discipline for not  
19 noting things in accounts?

20 A. It depends on the severity of the act.

21 Q. Okay.

22 A. They are at least reprimanded. And again, it  
23 depends upon the severity of the act.

24 Q. And who are the individuals in this case who  
25 placed calls to Dr. White's place of employment?

1 A. Where did they what, sir?

2 Q. The individual debt collectors or the  
3 individual employees --

4 A. Um-hum.

5 Q. -- do you know their names?

6 A. Do I know their names? They would be in the  
7 notes of this account, sir. I think we supplied  
8 those.

9 Q. Sure. I think they are also in front of you.

10 THE COURT: Mr. Radbil, just to speed this  
11 up, maybe you can approach and refer him to those  
12 names if that's what you were going to ask him.

13 MR. RADBIL: I'm not as familiar at  
14 interpreting the names. There's initials, I  
15 believe, on the left-hand side and because --

16 THE COURT: I guess my question is,  
17 perhaps if you are asking him a question that would  
18 cause him to go through these notes, that perhaps  
19 you can speed it up by coming up here and sort of  
20 showing him what you are referring to.

21 MR. RADBIL: Sure.

22 Q. (By Mr. Radbil) Are these the ones you  
23 highlighted?

24 A. Yeah. They are way down the list there.

25 Q. So there we have the initials MZA. Who is MZA?

1 A. I have 370 employees. I can't -- I can't  
2 remember all these initials. Again, I did supply  
3 those to you. I don't have a list in front of me of  
4 all of the names associated with these initials.

5 Q. Okay. Is there any on that list that you  
6 recognize?

7 A. I believe KL is Karen Nelson. I believe AAG is  
8 Aaron Garber. I don't recall who MRH is, CYD. I'm  
9 sorry, I don't remember the rest of these, sir.

10 Q. That's fine, sir. Do you recall whether any of  
11 those employees have been disciplined or reprimanded  
12 for any conduct undertaken in connection with  
13 attempts to collect debt from Dr. White?

14 MS. MALONE: Objection, Your Honor,  
15 irrelevant, and also subsequent remedial actions.

16 THE COURT: I'm going to allow it if he  
17 knows it in connection with the period of time that  
18 we are talking about, if he knows the answer to that  
19 question with regard to these employees. But my  
20 understanding is he only knows about two people  
21 whose initials are there, so if you can be more  
22 specific.

23 A. I don't recall.

24 THE COURT: He says he doesn't recall.  
25 Let's move on to the next question.



1 Q. (By Mr. Radbil) Who handles the discipline?

2 A. Either the collection managers or myself.

3 Q. Okay. Is it a 50-50 split, or do you handle  
4 certain types of disciplinary cases?

5 A. They handle the normal day-to-day disciplinary  
6 actions. I would handle anything that is probably  
7 of an egregious nature.

8 Q. How would you classify the failure to document  
9 a cease and desist request or a request from a  
10 consumer to stop calling a place of employment? Is  
11 that egregious?

12 A. I would consider that a violation, yes.

13 Q. And you said there are 300-plus individual debt  
14 collectors employed by Regional Adjustment Bureau?

15 A. Yes, sir.

16 Q. How many managers oversee those 300?

17 A. We have approximately --

18 THE COURT: Mr. Radbil --

19 A. -- 20-something.

20 THE COURT: -- I don't see the relevancy  
21 of that, so could you move on to your next question,  
22 please?

23 MR. RADBIL: Certainly.

24 THE COURT: Thank you.

25 Q. (By Mr. Radbil) Have you spoken with Karen

1 Nelson regarding whether or not Dr. White demanded  
2 that calls to his place of employment cease?

3 MS. MALONE: Objection, Your Honor,  
4 hearsay; also anticipation of litigation and defense  
5 privileges.

6 MR. RADBIL: No substance was asked for.

7 THE COURT: I'm sorry?

8 MR. RADBIL: I hadn't asked for any  
9 substance of the conversation, if there was one.

10 THE COURT: Overrule the objection. Do  
11 you want to ask the question again?

12 Q. (By Mr. Radbil) Yes. Have you had any  
13 discussions with Karen Nelson regarding whether or  
14 not Dr. White requested the telephone calls to his  
15 place of employment cease?

16 THE COURT: And this would be as to  
17 discussions outside of this litigation. If you have  
18 discussed this with her in the context of your  
19 attorney in preparing, that's -- you don't have to  
20 answer that. If it's outside of that, then answer  
21 it, please, if you know.

22 A. My notes don't indicate that any conversation  
23 such as that was held, so I wouldn't have reason to  
24 talk with her about that.

25 Q. (By Mr. Radbil) Okay. You agree that Regional

1 Adjustment Bureau placed calls to Dr. White's  
2 cellular telephone, home telephone, and place of  
3 employment?

4 A. I do agree.

5 Q. And I believe you also agreed that RAB did not  
6 have consent to place calls to his cell phone; is  
7 that correct?

8 A. That's -- that's hard to answer that question  
9 because the calls that we made to his cell phone  
10 were called manually, they were not called to a  
11 dialer. And it's my understanding that you do not  
12 have to have permission to call a cell phone number  
13 if you dial so manually.

14 Q. Does RAB use the Ontario Systems Guaranteed  
15 Contacts dialer?

16 A. Yes, sir, it does.

17 Q. And does that generate pools of numbers that  
18 are dialed by the dialing system?

19 A. It does generate pools of -- yes, sir, it does.

20 Q. Does RAB publicly represent on its company  
21 website that its guaranteed contact dialing system  
22 is a, quote, predictive dialer?

23 A. That is on the website, but we do not have a  
24 predictive dialer. That's a mistake on the website.

25 Q. Okay. Does the website state, quote,

1 persistence is the essential trait of successful  
2 collections, guaranteed contacts, quote, a  
3 predictive dialer provides persistent --

4 THE COURT: Hang on. Hang on. You are  
5 reading something, it's apparent, into the record.  
6 That would be hearsay. It's okay to ask him a short  
7 question, but to read from a paragraph would not be  
8 appropriate.

9 MR. RADBIL: Sure.

10 May I approach the witness and show the  
11 witness --

12 THE COURT: Make sure Ms. Malone sees what  
13 you are approaching with, please.

14 MR. RADBIL: It's Plaintiff's Exhibit 10.

15 THE COURT: Okay. This is Plaintiff's  
16 Exhibit --

17 MR. RADBIL: Number 10.

18 THE COURT: Okay. Go ahead.

19 Q. (By Mr. Radbil) Do you recognize that  
20 document, sir?

21 A. This is part of our website.

22 Q. Can you read -- I know it's small print --

23 THE COURT: It's not in evidence. Are you  
24 offering it?

25 MR. RADBIL: Yes.

1 MS. MALONE: Your Honor, the same  
2 objection that I raised earlier.

3 THE COURT: Overruled. He's acknowledged  
4 that this is something he recognizes, albeit with  
5 some dispute as to its content, it's an admission.  
6 Overrule.

7 (Plaintiff's Exhibit 10 admitted into evidence.)

8 Q. (By Mr. Radbil) If you can read those two  
9 paragraphs.

10 A. "Persistence is a successful trait of  
11 successful collections. Guaranteed Contacts, a  
12 predictive dialer, provides persistence that  
13 collectors cannot manually duplicate. Using  
14 Guaranteed Contacts enables our collectors to  
15 efficiently and quickly contact account holders."

16 "Guaranteed Contacts dials thousands of numbers  
17 each day. Through dialer strategies selected by the  
18 computer, telephone numbers to be called are placed  
19 in a dialing pool. Right party communications are  
20 dramatically increased based upon best practices  
21 that are implemented and coordinated by the highly  
22 experienced RAB management team."

23 Q. Thank you. You previously testified that  
24 you're familiar with how that dialer works.

25 A. We do not have a predictive dialer. The way

1 our dialer works is the collector makes a call, and  
2 until he hits the enter key, it does not dial  
3 another account. Whereas a predictive dialer  
4 determines how long a collector talks on an account,  
5 anticipates when he is going to hang up, and has  
6 another call ready to call.

7 Q. You are familiar with how the system works.

8 A. I am familiar with how the system works, yes,  
9 sir.

10 Q. And you have described the system as working in  
11 tandem with something called the Ontario Systems  
12 Flexible Automated Collections System?

13 A. Yes, sir. That's the database.

14 Q. You call it FACS or F-A-C-S for short?

15 A. Yes, sir, FACS.

16 Q. And I think you also previously explained that  
17 FACS is RAB's basic operational software and  
18 database containing account and debtor information  
19 concerning the alleged debts that RAB seems to  
20 collect.

21 A. That is a correct statement.

22 Q. And the Guaranteed Contacts dialer is  
23 integrated with the FACS system software?

24 A. Yes, sir, that's correct.

25 Q. And pools of numbers, criteria selected, which

1 generates pools of numbers which are then dialed by  
2 the dialing system?

3 A. That's correct.

4 Q. And you explained, I think in your deposition,  
5 the advantage of having a -- a predictive dialer is  
6 that it can dial more than a human can.

7 A. It's not a predictive dialer, but it can dial  
8 more telephone numbers than a human can, yes.

9 Q. And I think you also said you can set a dialer  
10 to dial several numbers at a time, and whichever  
11 individual -- whichever it connects to first, it  
12 drops the other calls off. But the advantage  
13 obviously is being able to cover more accounts.

14 A. That's correct.

15 Q. Okay. Do you dispute that Dr. White's  
16 telephone numbers were placed into the dialing pool?

17 A. His cell would not be in the dialing pool.

18 Q. Okay. Why wouldn't it be?

19 A. Because of the risk of violating the Telephone  
20 Consumer Protection Act by not having permission to  
21 place the number in an automated dialing pool.

22 Q. Dr. White didn't provide his cell phone number  
23 to Regional Adjustment Bureau, did he?

24 A. I don't know how it was obtained.

25 Q. Okay. Do you dispute that on February 15,

1 2011, the account notes show that RAB updated its  
2 FACS or F-A-C-S database to include Dr. White's  
3 cellular telephone number?

4 A. February 15th?

5 Q. Yes.

6 A. May I look at the note?

7 THE COURT: You may.

8 A. On February the 15th, we called the place of  
9 employment. We spoke with Dr. White. We talked  
10 about terms of repayment. We updated his address.  
11 He gave us permission to talk with Terry, and gave a  
12 telephone number of (214)792-9650.

13 Q. And to be clear, that's not the employment  
14 number that you have listed, correct?

15 A. Let's see. We manually called the employment  
16 number and spoke with Dr. White. And as I said, he  
17 gave us permission to call this other number, this  
18 (214)792-9650, and that's pretty much what the note  
19 says on the 15th.

20 Q. And on February 17th, 2011, RAB changed the,  
21 quote, responsible party telephone number for  
22 Dr. White's account to his cellular telephone  
23 number. So the RP number was changed from  
24 (281)324-2406 to (281)435-1163 with a G after it.

25 A. It says it was a good number, yes.



1 Q. And a good number indicates what?

2 A. The G, is that what you asked me, sir?

3 Q. Yes.

4 A. The G indicates it's a good number.

5 Q. In terms of the order of the numbers that would  
6 be called?

7 A. It changed a number that was on there that  
8 apparently was not good to a number that says it is  
9 good. I'm not sure what number this one that was  
10 removed is, (281)324-2406. I'm not sure what that  
11 number is.

12 Q. Do you recall testifying that the G indicated  
13 that that number would be called first?

14 A. The G indicates, yes, it would be called first.

15 Q. So on February 17, 2011, Dr. White's cellular  
16 telephone number was changed in your system to the  
17 number that should be called first.

18 A. It was changed, yes.

19 Q. Okay. And do you dispute that the account  
20 notes show that Dr. White's account, including his  
21 newly designated RP telephone -- cellular telephone  
22 number was repeatedly moved back into the automatic  
23 dialer by the employees of Regional Adjustment  
24 Bureau?

25 A. I don't see where it was -- it was not called

1 through the dialer, it was called manually.

2 Q. But the calls that are listed here, as you  
3 mentioned before, the number of calls listed don't  
4 include those where no contact was made, correct?

5 A. The number of calls includes the number of  
6 attempts to call, so it would include those.

7 Q. I was under the impression before you testified  
8 that the reason that there's a discrepancy between  
9 the number of calls being 70 and the total number  
10 counted was because some are not documented.

11 A. I think we counted, what, 77 calls.

12 Q. Um-hum.

13 A. Yeah. And it shows 70 on here. So there's  
14 actually more calls that were made that are on here  
15 than the number indicates.

16 Q. Correct.

17 A. Okay.

18 Q. And there could be more than that, as well.

19 A. It's possible.

20 Q. The 3TRP notation, represents Dr. White's  
21 account moving back to the automatic dialer; is that  
22 correct?

23 A. Where do you see that, sir?

24 Q. I believe it's in your employee training  
25 manual.

1 THE COURT: Why don't you refer him to it  
2 if you've got it.

3 Mr. Wyatt, do you know what the 3TRP  
4 designation is without referring to the manual?

5 THE WITNESS: TRP means trap. And what  
6 that does is, it takes it back into the account and  
7 puts it back in the general work flow. It doesn't  
8 necessarily put it into a dialing pool.

9 Normally that account would be in  
10 someone's route; in other words, under someone's  
11 initials, and that would move that back into the  
12 general work flow.

13 THE COURT: Mr. Radbil?

14 Q. (By Mr. Radbil) So is there any dispute that  
15 Dr. White's cellular telephone number was placed in  
16 the dialing pool of the dialing system that you  
17 used?

18 A. I don't think there was any question that  
19 Dr. White's cell phone was never in the dialing  
20 pool.

21 Q. You're saying it was not in the dialing pool?

22 A. It was not in the dialing pool.

23 Q. Well, what indicates it was not in the dialing  
24 pool?

25 A. Because all of the calls that have been made

1 that I have seen here are done manually, and that's  
2 to avoid problems with the Telephone Consumer  
3 Protection Act.

4 Q. So on March 2, 2011, the account notes show an  
5 RAB employee identified as SMF moved Dr. White's  
6 account back to the automatic dialer.

7 A. When?

8 Q. March 2nd, 2011.

9 A. Yes, sir. It shows 3TRP, which moves it back  
10 not into a dialing pool, it moves it back into the  
11 regular business flow. It makes no reference to a  
12 dialing pool.

13 THE COURT: Let's have a question, please.

14 MR. RADBIL: Yes.

15 Q. (By Mr. Radbil) Do you recall testifying that  
16 SMF is an individual in the IT Department that  
17 handles tactics and dialing situations?

18 A. That is correct.

19 Q. Okay. How does the dialing system work from an  
20 individual collector standpoint?

21 A. The collector puts in a command that puts them  
22 into the dialing pool. They hit the enter key on  
23 the keyboard of their computer that begins the  
24 dialing sequence. It goes out and dials. If it's  
25 set for three -- three calls per collector, it goes

1 out and tries three numbers. The first number that  
2 goes off hook, meaning the person answers, it paints  
3 that account on the screen and drops the other calls  
4 off. That means -- when the account paints, that  
5 means someone has picked up the phone and said  
6 hello.

7 Q. And when a call routed to any particular  
8 station of a collector is actually terminated, RAB's  
9 employees are trained to initiate the automatic  
10 dialing system again by hitting the enter key on  
11 their computer?

12 A. Once they are ready to go to the next account.

13 Q. When they hit that enter key, the dialer starts  
14 dialing, right?

15 A. The dialer does what, sir?

16 Q. The dialer starts dialing numbers?

17 A. Yes.

18 Q. More than one number?

19 A. Yes.

20 Q. Whichever connects first is transferred back.

21 A. Whoever answers first and paints that account  
22 on the screen, it drops the others; in other words,  
23 disconnects the other numbers it might have been  
24 trying.

25 Q. And that's how the calls are -- that's how

1 business is done at RAB?

2 A. That's how they use the dialer.

3 Q. Okay. And then the dialer used by RAB  
4 recognizes when the live voice is on the other end,  
5 that's what triggers the transfer?

6 A. When it recognizes the voice, it puts the  
7 account on the screen, yes, sir.

8 THE COURT: Mr. Radbil, how many more  
9 questions do you have?

10 MR. RADBIL: None at this time, Your  
11 Honor.

12 THE COURT: Okay.

13 MR. RADBIL: Pass the witness.

14 THE COURT: Cross-examination?

15 MS. MALONE: Thank you. Your Honor, can I  
16 pull the easel over?

17 THE COURT: You may.

18 **CROSS-EXAMINATION**

19 Q. (By Ms. Malone) Mr. Wyatt, I want to back up  
20 and ask you if you would explain to the jury, how is  
21 RAB owned?

22 A. It's owned by the employees of Regional  
23 Adjustment Bureau through a stock ownership program.

24 Q. So you're one of the owners?

25 A. I'm one of the owners.

1 Q. All right. Just for a minute, could you tell  
2 the jury just a little bit about your educational  
3 background, sir?

4 A. I am a 1970 graduate of Southeast Missouri  
5 State University. I have a Bachelor of Science  
6 degree in Business Administration.

7 Q. Okay. And in your career, have you always  
8 worked in the collection area?

9 A. Well, my first job was a collector for a  
10 finance company, I guess in 1970. I'm trying to  
11 remember back that far. And I had worked my way up  
12 to a manager's position with a finance company. I  
13 worked for them for a period of time, and I had to  
14 quit because they required people to transfer all  
15 over the country, and my wife wasn't willing for me  
16 to do that.

17 I was then a senior lending officer for a bank  
18 and worked in that capacity for approximately two  
19 years and found out that I could not get promoted  
20 until someone died. I'm sorry to put it that way.  
21 Then I went into the collection business, and I  
22 worked for another collection agency for, oh,  
23 approximately a year and a half. And then I moved  
24 over to Regional Adjustment Bureau, and I've been  
25 there for the last 30 years.

1 Q. And you said you are married. How long have  
2 you been married, sir?

3 A. I have been married 38 years to the same  
4 wonderful woman.

5 Q. Kids, grandchildren?

6 A. I have three children and six grandchildren I  
7 am proud of.

8 Q. And I know you are proud of your MPD son.

9 A. My son is a Memphis Police officer. And I am  
10 very proud of him and jump every time the phone  
11 rings.

12 Q. Do you have any dogs or anything?

13 A. Oh, I have two pit bulls that are like my  
14 children. I take them walking. We play in the  
15 backyard. It's -- they are -- people have bad  
16 impressions of pit bulls. They are the sweetest,  
17 kindest, gentlest, smartest dogs I have ever seen.

18 Q. Okay. Let's talk more about your time at RAB  
19 in the 30 years. I'm not going to ask you from when  
20 to when, but can you just tell us generally the jobs  
21 you held there?

22 A. I started as a collector, started on the  
23 collection floor just as everyone else, and I was  
24 promoted to the collection manager. I worked as a  
25 collection manager, and because we were a small --



1 small agency at the time, I was also the training  
2 director. So I split my duties during the same day  
3 of going from the collection floor to the training  
4 lab and training collectors on how to do things  
5 properly.

6 After a period of time, I was promoted to  
7 general manager, and I performed those duties for a  
8 while. And I then made a lateral move to the  
9 Director of Compliance in Human Resources. And the  
10 general manager became the former owner's son.

11 Q. I'm going to talk to you about training, but  
12 first I want to get some explanation on how to read  
13 these account notes.

14 A. Okay.

15 Q. Okay. You have been telling us that you can  
16 tell when a call is manual --

17 A. Um-hum.

18 Q. -- or a dialer?

19 A. Right.

20 Q. Okay. How do you do that?

21 A. Well, it has the letters QC, which is  
22 Guaranteed Contacts, which is the name of the dialer  
23 that we use, or whether it refers to manual dial and  
24 the telephone number directly after that number.

25 Q. So if it says, manual dial, what does that

1 mean?

2 A. That means the collector -- I don't have one in  
3 front of me -- picks up the telephone and dials it  
4 just as you would dial it from your phone.

5 Q. From my office?

6 A. From your office.

7 Q. Push numbers into a phone.

8 A. Yes, ma'am.

9 Q. Okay. And in this particular case, we were  
10 talking -- and I'm going to have you go, sir, to  
11 page 21 -- I'm sorry. Let me back you up a little  
12 bit.

13 It's page 19. I apologize, Mr. Wyatt.

14 THE COURT: That's Plaintiff's Exhibit --

15 MS. MALONE: It is both Plaintiff's  
16 Exhibit 6 and Defendant's Exhibit 1.

17 THE COURT: Thank you.

18 Q. (By Ms. Malone) Mr. Wyatt, when we are  
19 comfortable with the notebooks that has the pages  
20 attached, feel free to use that.

21 On page 19, I believe this is the first time we  
22 see an entry to the manual, the telephone number,  
23 (866)417-8776; is that correct?

24 A. Yes, ma'am. Yes, ma'am.

25 Q. And you've heard that that is the phone number

1 for Simple Surrogacy, right?

2 A. Yes, ma'am. I have that as the place of  
3 employment, that telephone number, yes, ma'am, I do.

4 Q. Mr. Radbil had you count those numbers, so I  
5 just want you to go with me and tell me if the first  
6 entry on February 1st, whether that was a manual  
7 dial or dialer call?

8 A. That was manually dialed, ma'am.

9 Q. Okay. And I'm going to put M for manual.

10 A. Okay.

11 Q. All right. Can you tell me whether or not any  
12 contact was made or a message was left?

13 A. Just read the notes. Telephoned possible POE,  
14 voicemail, no message was left.

15 Q. So I'm going to put N for message if it's no  
16 and Y for yes.

17 And the next entry I see there is on the same  
18 page on the next day, on February the 2nd; is that  
19 correct?

20 A. Yes, ma'am.

21 Q. Again, how was the call made?

22 A. This is a manually dialed call to the place of  
23 employment. It says, Telephoned place of  
24 employment, got a recording of some kind; there was  
25 no message left.

1 Q. When you leave a message from RAB, how is that  
2 message left? Is it a person, a computer, what  
3 leaves the message?

4 A. We don't have computer-generated messages.  
5 Those would all be messages from a live collector.

6 Q. Okay. And then looking on the same page -- and  
7 I think we are now at 2/3?

8 A. There is another manually dialed call to the  
9 place of employment, telephoned place of employment,  
10 recording, no message left. That's indicated by  
11 NML.

12 Q. So if we're reading these notes and it says  
13 NML --

14 A. It means no message left.

15 Q. The other one I see is NWL.

16 A. It means the same thing; no leave word.

17 Q. All right. And when we go through these  
18 account notes on the very first page you said there  
19 was something called calls?

20 A. Yes, ma'am.

21 Q. And you said --

22 A. Sorry, I apologize. What was the question?

23 Q. It says calls --

24 A. Yes, ma'am.

25 Q. -- is that actual making somebody's phone ring?

1 A. This could be attempts. It could be attempts  
2 to call those phones.

3 Q. So if the call gets a busy signal, would it  
4 show up?

5 A. Yes.

6 Q. What happens if, in the middle of the call, it  
7 drops off, as you described from your system?

8 A. It would probably show a call.

9 Q. Even if it didn't dial the whole number.

10 A. Right, because it attempted it.

11 Q. If I were sitting in my office and calling on  
12 the phone and somebody said, hey, your husband is on  
13 line two and I hung up, it would count that first  
14 call.

15 A. It would.

16 Q. What does contacts mean?

17 A. You actually speak to someone.

18 Q. Okay. So when we go through here in the  
19 bottom, will every call be marked in the actual  
20 account notes even if it doesn't up on the call  
21 count at the beginning?

22 A. What, ma'am?

23 Q. That was a bad question. I'm sorry, Mr. Wyatt.

24 From your company's perspective, do you believe  
25 that all of the attempted action on a case would

1 show up in the actual, physical notes whether or not  
2 they marked the count as a call on the front page?

3 A. All the work is on the notes -- in the notes.

4 Q. So that's what you use to decide whether or not  
5 somebody has done something, is that fair?

6 A. That is correct.

7 Q. Okay. Now let's go back to our work numbers.

8 The next one I see is also on page 19 at 2/4; is  
9 that correct?

10 A. Yes, ma'am. There's a call on 2/4.

11 Q. Again, how was it made?

12 A. Manual dial, telephone number (866)417-8776.  
13 Telephoned place of employment; says recording, no  
14 message left.

15 Q. Okay. And then the next one I have is also on  
16 page 19 at 2/7; is that right?

17 A. Yes, ma'am. It says, long ring tone, did not  
18 go through. They encountered some kind of problem  
19 calling the number at that point.

20 Q. How was that called?

21 A. That was called manually.

22 Q. Okay. So it didn't result in an actual --

23 A. It says it didn't go through.

24 Q. Okay. And then the next one I have is on the  
25 same page at 2/7 -- I'm sorry, 2/11?

1 A. Yes, ma'am. Manual dial, same phone number.  
2 Telephoned -- they got residence here for some  
3 reason -- recording, no message left.

4 Q. Up to this point in time -- by the way, when  
5 was this account first opened?

6 A. August the 8th, 2010.

7 Q. Had anyone spoken to Mr. White yet?

8 A. Not up to this point.

9 Q. Okay.

10 A. According to these notes, no.

11 Q. All right. And then on the next page I have a  
12 note for that same phone number on page 20. Can you  
13 tell me what it says there?

14 A. Page 20?

15 Q. Yes, sir.

16 A. Okay. Manually dialed, (866)417-8776.

17 Q. Okay.

18 A. And we spoke with Dr. White; read him the Mini  
19 Miranda; talked about balance in full as settlement.

20 Q. So I'm just trying to get whether or not there  
21 was communication and how the call was.

22 A. We talked to him.

23 Q. So this time you got somebody.

24 A. Yes, ma'am.

25 Q. All right. And then the next page that I have

1 is on page -- is on page 21. I have an entry after  
2 2/17. Do you see one before that, sir?

3 A. I see where Dr. White called our office on  
4 2/15 at 11:33 a.m.

5 Q. We will come back to Mr. White. Right now I'm  
6 trying to make a record of the work calls.

7 A. Okay.

8 Q. Do you see one at 2/17?

9 A. Yes, ma'am.

10 Q. And can you tell me, was that a manual call?

11 A. That was a manual call. Telephoned place of  
12 employment; only got automated system.

13 Q. So message left, yes or no?

14 A. No.

15 Q. And before we leave that page, let me ask you a  
16 question: Do you see any note on this page where  
17 there was an indication that Mr. White told anyone  
18 that he was not allowed to receive phone calls at  
19 the 866 number?

20 A. No, ma'am.

21 Q. Okay. And I think you had told us earlier that  
22 there was some discussion of a payment or discussion  
23 about a payment?

24 A. I'm looking at the notes on 2/15/11. He said  
25 he would call back later today; checking account



1 information to set up payment of intent for \$100;  
2 collector said, I advised him we will need to start  
3 a rehab program, too.

4 Q. Okay. Immediately above that note, sir, it  
5 says something regarding a tax seizure. Can you  
6 tell us what that entry says and what it means?

7 A. Debtor is aware of tax seizure. On guaranteed  
8 student loans like this, our client participates in  
9 the federal tax offset programs, which means that  
10 they can seize any taxes that are due to the  
11 individual if they owe delinquent federally funded  
12 student loans.

13 Q. You mean, like they get to keep their tax  
14 refund check?

15 A. Keep their tax refund check.

16 Q. Okay. All right. Do you see any other --  
17 immediately below that note, is there a reference  
18 that Mr. White will call back?

19 A. Yes. It says, call back today with checking  
20 information and set up payment of intent for \$100.

21 Q. Okay. And while we're still on this page, if  
22 you will go down and read for us the entry at 2/17,  
23 11:58.

24 A. Yes, ma'am. Debtor called back in. Debtor  
25 called in from -- looks like the cell phone number

1 that we have on file here; stated Mini Miranda;  
2 claims that he does not want to make arrangements on  
3 loan; he is fully aware of the debt; he is fully  
4 aware when loan went to default that balance in  
5 full -- I guess that's balance in full is due.

6 Q. And again, is there any reference to not  
7 calling him at the 866 number?

8 A. No, there's no reference. That's the entirety  
9 of the note.

10 Q. Okay. And I noticed on these two entries where  
11 you are describing, it says GC in parentheses and  
12 then inbound call. Can you explain that?

13 A. It means that the collector had their headset  
14 on, were in a dialing mode, and received an inbound  
15 call through that.

16 Q. So if it says, inbound call from a cell phone  
17 number, that's Mr. White calling you?

18 A. That's him calling us.

19 Q. All right. If we could, sir, go to the bottom  
20 of that page at 2/23, I see one more call to that  
21 number?

22 A. Yes, ma'am. It says, manually dialed  
23 (866)417-8776. Telephoned POE; got general machine,  
24 which is, I guess, an answering machine. So they  
25 would not have left a message for him at that time.

1 Q. So manual call, no message left.

2 A. Right.

3 Q. All right. Up to this point in time, has there  
4 been any dialer call to this 866 number?

5 A. These are manually dialed calls.

6 Q. Has there been any indication from Mr. White  
7 that you are not to call that number?

8 A. There is no indication in these notes.

9 THE COURT: Ms. Malone, we are going to  
10 take a 15-minute break. Ladies and gentlemen, we  
11 will break every day at five unless there is  
12 something unusual, and I will warn you about it  
13 ahead of time.

14 Please remember that you can't discuss the  
15 case at all. The natural inclination is to talk  
16 about what happened in the courtroom, but, again,  
17 that's off limits until you are all in there with  
18 the jury instructions deliberating. So we will see  
19 you back here in 15 minutes. All rise for the jury,  
20 please.

21 (Jury leaves courtroom)

22 THE COURT: Mr. Radbil, I don't have  
23 marked exhibits from you. I have your summary  
24 judgment exhibits, but that's all I have. I don't  
25 need them this minute, but I do need marked exhibits

1 for the Court, otherwise I can't follow along.

2 MR. RADBIL: I have one binder of exhibits  
3 that is complete, and I have each exhibit that I  
4 plan to offer marked. Tomorrow morning I will bring  
5 a binder with everything marked.

6 THE COURT: Okay. And I'm sure it's just  
7 an inadvertent oversight, but the Court directs that  
8 copies of the exhibits be submitted. So I need  
9 that, that way I can make sure I rule properly on  
10 objections.

11 MR. RADBIL: First thing tomorrow.

12 THE COURT: Okay. We will see you in  
13 about 15 minutes.

14 (Recess taken from 2:46 to 3:11.)

15 THE COURT: Sorry to keep you waiting. We  
16 had something come up in another case and took  
17 longer than I thought.

18 Ms. Malone, go ahead.

19 MS. MALONE: Thank you, Your Honor.

20 Q. (By Ms. Malone) Mr. Wyatt, we're at page 22.

21 Do you see on page 22 any attempted calls to  
22 the 866 phone number?

23 A. To the what, ma'am?

24 Q. Page 22, any calls to the 866 phone number?

25 A. No, ma'am.

1 Q. Okay. And do you see any indication there was  
2 communication directly with Mr. White on page 22?

3 A. Not at all.

4 Q. If you will look with me on page 23, the next  
5 time that I show an entry to the 866 number is 2/28.

6 Is that accurate, sir?

7 A. That is correct.

8 Q. Okay. Same question. How is it called?

9 A. It was a manually dialed number.

10 Q. Message left or not?

11 A. Left message it says.

12 Q. Yes?

13 A. Yes.

14 Q. Okay. And what kind of message would that have  
15 been, electronic or personal?

16 A. It would have been a message, personal message.

17 Q. Human voice?

18 A. Human voice, right.

19 Q. Okay. All right. I see another entry on that  
20 page down about 3/7. Do you see any before that?

21 A. No, ma'am.

22 Q. Okay. Immediately above the 3/7 note, just so  
23 when someone is looking at these letters they can  
24 interpret them, it says, IRS offset status received.

25 Can you explain what that means?

1 A. It's an indication regarding tax offset. The  
2 note is made by a computer programmer.

3 Q. Okay. Is that an entry that's made -- is that  
4 something your company does or does Texas Guaranteed  
5 do that?

6 A. We have nothing to do with tax offsets. They  
7 initiate that; they handle that. And they only  
8 report to us if money is received through an offset,  
9 and we don't receive any kind of commission or  
10 benefit from that. It's just to adjust the balance.

11 Q. Okay. And so the next entry we have is at 3/7;  
12 is that right?

13 A. Yes, ma'am.

14 Q. By 3/7 we mean March the 7th, right?

15 A. Yes. And it says, manually dialed. Under  
16 that -- directly under that it says, telephoned  
17 debtor's place of employment. It was a voicemail;  
18 no message left, it says.

19 Q. All right. And then I see one more at 3/8.

20 A. 3/8, telephoned place of employment; no message  
21 left on that one, ma'am.

22 Q. Do you see any other telephoned to place of  
23 employments on that page, sir?

24 A. No, I do not.

25 Q. Do you see any indication of communication

1 directly with Mr. White on that page, sir?

2 A. No.

3 Q. Okay. At the bottom of the page it says, 3/11;  
4 it says manual dial. Is that a cell phone number  
5 there, sir?

6 A. That is a cell phone number, yes, ma'am.

7 Q. I'm not going to do all of them. I want to  
8 make sure that someone can read these letters. All  
9 right?

10 A. Okay.

11 Q. On the next page, page 24, I see one at 3/14.  
12 Do you see any others?

13 A. Yes, ma'am.

14 Q. You see the same one?

15 A. I see one at 5:00.

16 Q. Okay. On 3/14?

17 A. Yes, ma'am.

18 Q. And can you tell me how the call was made?

19 A. It says, manual dialed, (866)417-8776.  
20 Telephoned place of employment; no answer; went to  
21 voicemail; no message left.

22 Q. Okay. And do you see any indication on that  
23 page that there was a communication directly with  
24 Mr. White?

25 A. There was no communication.

1 Q. Was there an indication that they spoke with  
2 someone?

3 A. Spoke to someone at (214)792-9650; telephoned  
4 residence; man refused to take a message; said to  
5 call back.

6 Q. Okay. On the next page, do you see an entry to  
7 the 866 one?

8 A. Yes, 3:47 p.m.

9 Q. On what day, sir?

10 A. 3/15/11.

11 Q. Again, how was the call made?

12 A. It's a manual call.

13 Q. Message left?

14 A. Says, no answer.

15 Q. So?

16 A. No message.

17 Q. Okay. But no answer?

18 A. No answer.

19 Q. All right. And do you see indication on that  
20 page that there was communication with Mr. White?

21 A. Not with Mr. White. I see indication that  
22 someone was spoken to, but it was not Mr. White.

23 Q. Could you read that entry for us, sir?

24 A. Spoke with debtor's spouse; stated debtor was  
25 out of town; not in position to make any decisions



1 for debtor, but he is to call back at 9:00 p.m.,  
2 will have -- will have him call us at that time.

3 Q. Do you see any indication that there was a  
4 return call on that page, sir?

5 A. No, I do not.

6 Q. Okay. And I see one more entry for the 866  
7 number. Do you see one?

8 A. I see one on 3/16/11 at 2:24 p.m.

9 Q. Again?

10 A. Telephoned -- this is a manually dialed call --  
11 and it says, no answer immediately below that.

12 Q. So no message left?

13 A. No message left.

14 Q. And no answer?

15 A. No answer.

16 Q. All right. On the next page, 26, do you see  
17 any calls to the 866 number?

18 A. I do not.

19 Q. Do you see any indication there was  
20 communication with Mr. White?

21 A. There was no communication.

22 Q. Okay. On the next page, page 27 --

23 A. Okay.

24 Q. -- do you see any indication there was a call  
25 to the 866 number?

1 A. I do see one, 4/1/11 at 12:53 p.m., and it says  
2 we left a message.

3 Q. Okay.

4 A. That was manually dialed, I'm sorry, and left  
5 message.

6 Q. All right. And do you see any indication there  
7 was communication with Mr. White?

8 A. There was no contact with him.

9 Q. So was the only communication directly with  
10 Mr. White the notes that were made on the  
11 February 15th/17th time frame on page 21?

12 A. I see the communication on 2/15, and I see he  
13 returned a call on the same date, 2/15.

14 Q. And do you see a call on 2/17?

15 A. I do see the 2/17 call.

16 Q. And no other communication with Mr. White; is  
17 that right?

18 A. No, ma'am. That's right, I don't see one.

19 Q. Okay. And if I were to go through this and do  
20 this with the cell phone number for Mr. White --

21 A. Um-hum.

22 Q. -- when you are looking through them, do any of  
23 them indicate they were used with the dialer?

24 A. May I check through them, please?

25 Q. Sure. Please feel free to, sir. If it helps

1 you, Mr. Wyatt, all of the entries for the cell  
2 phone appear between page 21 --

3 A. Okay.

4 Q. -- and 27.

5 A. Yes, ma'am. These are all manually dialed  
6 calls.

7 Q. Did you count nine calls?

8 A. I can count them.

9 Q. No, I won't make you do it.

10 A. That's all right.

11 Q. All manually called?

12 A. Yes.

13 Q. Just so we can see something different, for a  
14 Guaranteed context call, would you look on page 11?

15 A. Sure.

16 Q. I just randomly picked one, sir.

17 A. All right.

18 Q. Do you see an entry at 10/18/2010?

19 A. Yes, I do.

20 Q. Can you read that and explain it?

21 A. GC is skipped number, which is a reference  
22 number; gives a number of the reference,  
23 (281)501-9192 called; says, wrong number, no message  
24 left.

25 Q. Okay. So if you go through these, it says --

1 if it says SKP, that's a skipped number?

2 A. Right. That's not a residence number, it's a  
3 skipped number attempting to locate the individual.

4 Q. All right. Now, Mr. Wyatt, let's just back up  
5 a minute and talk about this training program that  
6 is operated at RAB.

7 A. Okay.

8 Q. When you hire a new employee and they come on  
9 board, can you just basically tell us what you do in  
10 terms of training?

11 A. We have -- to start with, we have a full-time  
12 training director, an assistant training director.  
13 We have a separate training lab and part of the  
14 collection floor that's devoted just to newly-hired  
15 individuals.

16 During the first week of training, the first  
17 few days after orientation, they learn about the  
18 Fair Debt Collection Practices Act. We go through  
19 the entire act. Then we require them to take a test  
20 on that act and make -- make 100 percent. If they  
21 don't, they are trained on that. We do some role  
22 playing sessions. We learn about state laws.

23 Then we put the collector on the collection  
24 floor in a segregated -- in a segregated area. We  
25 have supervisors walking the floor among them,

1 letting them get their feet wet.

2 And then we bring them back into the training  
3 room and say, since you've touched a few things,  
4 what have you learned? What questions do you have,  
5 and so forth. And they are assigned to their  
6 different divisions. But they are closely monitored  
7 by managers who stand between them, walk the floor,  
8 and constantly monitor that situation.

9 Then they are called back in again to find out  
10 what other questions or comments that they have.

11 Q. Okay. If you would turn in that binder, sir,  
12 next to you under tab 5. Could you identify that  
13 particular document for me?

14 A. Certainly. This is the -- it says, Retail  
15 Collector Training Manual, but this is the generic  
16 training manual that's given to the collectors when  
17 they start.

18 Q. Is this a document that's created by  
19 individuals at Regional Adjustment Bureau?

20 A. Yes.

21 Q. And is this a document that's maintained in the  
22 ordinary course of your business at that company?

23 A. Yes, it is.

24 MS. MALONE: Your Honor, at this time  
25 defendant would offer Defendant's Exhibit 5.

1 THE COURT: Any objection?

2 MR. RADBIL: Yes, I object on the grounds  
3 that the Regional Adjustment Bureau doesn't apply --

4 THE COURT: The objection is that it's  
5 hearsay? Or what's the legal objection?

6 MR. RADBIL: Relevance.

7 THE COURT: Overruled. Defendant's 5 --

8 MS. MALONE: Yes, ma'am.

9 THE COURT: -- is admitted.

10 (Defendant's Exhibit No. 5 admitted into evidence.)

11 Q. (By Ms. Malone) Now, Mr. Wyatt, this item that  
12 we find at Defendant's 5, can you tell us generally  
13 what it is?

14 A. It's different aspects -- it talks about things  
15 like the various windows on a particular account;  
16 how to create mail; talks about inbound and incoming  
17 calls. It also talks about how to provide good  
18 customer service to individuals; it goes into  
19 several pages of that. It talks about different  
20 urgency payments; how to listen and work with  
21 individuals.

22 Q. Okay. In this document, does it tell your  
23 individual employees how to leave messages?

24 A. Yes, I'm sure it does. Let me see what page  
25 that is.

1 Q. I tell you what, Mr. Wyatt, just to move you  
2 along, let me flip you to a page, and we will come  
3 back to that one, and I will give you a page number.  
4 I apologize for not having it.

5 A. That's fine.

6 Q. If you would look with me on page -- it says at  
7 the bottom, page 187.

8 A. One what, ma'am?

9 Q. 87.

10 A. 87. Okay. Cease call to a specific number?

11 Q. Yes, sir. Can you tell us basically what this  
12 particular procedure says?

13 A. Ceasing calls to a specific number can be  
14 accomplished in writing or by verbal communication.  
15 A collector must stop calling a specific number when  
16 anyone answering the phone states that the customer  
17 cannot be contacted at that number, used to live  
18 there but no longer does, or has never lived there.  
19 Anyone answering the phone states that the person  
20 called has the same name as the customer but is not  
21 the customer, a written notice to cease calls to the  
22 number shall cease; any of those reasons.

23 Q. If you would, just in the middle of the page  
24 there are some little bullets. It says an example  
25 of when you are supposed to cease calls. Do you see

1 what it says regarding place of employment?

2 A. It says, Prohibited calls to place of  
3 employment.

4 Q. Okay. What does that mean? Just -- not  
5 reading it, Mr. Wyatt, just tell us generally.

6 A. The indicator B beside that information refers  
7 to the fact that we would code this as a bad number.  
8 So it would not either be called manually or  
9 wouldn't be called through a dialer. It flags that  
10 particular phone number as bad.

11 Q. Okay. I noticed when we were going through the  
12 account notes earlier there was a reference to  
13 something called a Mini Miranda. What is that?

14 A. Section 807, I believe, subparagraph 11 of the  
15 Fair Debt Collection Practices Act, which says, This  
16 is an attempt to collect a debt by a debt collector,  
17 and any information obtained will be used for that  
18 purpose.

19 Q. And is -- how is the Mini Miranda supposed to  
20 be used, sir?

21 A. We are supposed to use that either verbally or  
22 in writing on all communications, and we are  
23 supposed to say that at the beginning of the  
24 conversation.

25 Q. Okay. And would that include leaving a message



1 on a phone?

2 A. That would include leaving a message on a  
3 phone.

4 Q. Is that the training policy at RAB?

5 A. That is the way we train our collectors to do  
6 it, yes, ma'am.

7 Q. Are RAB policies the same as the FDCPA or  
8 stricter?

9 A. We are very much more stringent than the FDCPA  
10 requires us to be for compliance reasons and for  
11 our -- because that's the way our company does  
12 business.

13 Q. Okay. If -- you told us about the initial  
14 training program. How long do you test your  
15 existing employees?

16 A. Our employees are tested quarterly. But as far  
17 as training goes, training never stops at Regional  
18 Adjustment Bureau. We have update meetings on the  
19 collection floor with various groups of collectors  
20 at least every Monday.

21 Q. Okay. So you give a test to an existing  
22 employee and they don't do well, what happens?

23 A. That employee is put into a training class.  
24 And if there's a group of those, then they are all  
25 schooled on the same subject and then asked to take

1 another test until we are sure they are proficient  
2 in what they are dealing with.

3 Q. Okay. And in these weekly meetings, what kinds  
4 of things are discussed with collectors?

5 A. Well, we talk about any changes in various  
6 state or federal laws, any updates that we receive.  
7 We're members of the ACA International, which is a  
8 collector's association, any kind of updates or  
9 bulletins that we get from them. It could relate to  
10 changes in client procedures or matters, anything  
11 like this.

12 Q. Okay. Are they tested initially before they  
13 are ever allowed to talk to a consumer on the floor?

14 A. They take that Fair Debt Collection Practices  
15 Act test within the first few days. And as I said,  
16 if they don't pass that with a grade of 100 percent,  
17 they are gone back -- they have to go back through  
18 the training, and they have to complete that with  
19 100 percent.

20 Q. Okay. When an employee messes up, what is the  
21 range of disciplinary action that you would take or  
22 can take?

23 A. Depending upon the nature of the action, it  
24 could be a verbal warning, it could be a written  
25 warning, it could be a suspension without pay, or it

1 could be termination, based on the action.

2 Q. Are there some things that warrant termination  
3 the first time it happens?

4 A. There certainly are. There are some egregious  
5 acts that we do not tolerate.

6 Q. Can you give me an example of something you  
7 would terminate for immediately?

8 A. If we -- if we are aware that profanity is used  
9 on the telephone, they are immediately terminated.

10 Q. Okay. Racial epithets?

11 A. Racial epithets included; goes without saying.

12 Q. Okay. And if an employee is sanctioned or  
13 terminated (sic), could it affect their bottom line?

14 A. If they are what, ma'am?

15 Q. If they are sanctioned or reprimanded, could it  
16 affect their bonuses?

17 A. Yes, certainly. Yeah, they could be lowered to  
18 a different degree of collections, which could not  
19 result in, you know, commissions and so forth. They  
20 could be penalized.

21 Q. Okay. Let's talk a little bit about this  
22 dialer that we have been discussing. Does your  
23 dialer store or randomly generate telephone calls?

24 A. We build pools of numbers. I think what --  
25 what people get confused about is the difference

1 between our dialer and a dialer that, say, for  
2 telemarketing, randomly dials thousands and  
3 thousands of numbers not knowing where it's calling.

4 Q. Okay. And what does your phone system do?

5 A. Our filing system is -- we build pools of  
6 numbers of our customers into that, and that dials  
7 those specific numbers. It doesn't store those  
8 numbers, and we have to we rebuild those numbers.

9 Q. Every day?

10 A. Every day. It's not -- it's not a random  
11 selection.

12 Q. If you have a call that goes through the  
13 dialer, is it recorded in your system?

14 A. If it goes through the dialer, it is recorded.

15 Q. You answered my question but it was a bad  
16 question. Is there actual electronic recording in  
17 the system?

18 A. Yes.

19 Q. In this case, were there any electronic  
20 recordings?

21 A. No, there were not.

22 Q. If a call is sent through the dialer, is it  
23 automatically notated in those account notes?

24 A. Yes, it would be.

25 Q. Is that something a collector can change?

1 A. Collectors cannot change notes; notes are  
2 permanent.

3 Q. Once a note is entered by a collector and they  
4 finished but they think there's a problem, can they  
5 go back and change it?

6 A. No, they can't change it. What they have to do  
7 is make another note correcting the previous note.

8 Q. I want to talk to you for a minute about Texas  
9 Guaranteed Student Loans. We talked about the IRS  
10 stuff. Can it affect --

11 MS. MALONE: I'm sorry, Judge. I realized  
12 I have ink all over me.

13 Q. (By Ms. Malone) Can Texas Guaranteed Student  
14 Loan, under their program that they give you, are  
15 you taught to tell consumers about the effect  
16 default would have on their graduations?

17 A. Yes.

18 Q. Are you taught to tell them about the effect it  
19 might have on their licensure?

20 A. Yes, we are.

21 Q. What is a rehab program in the Texas Guaranteed  
22 Student Loan system?

23 A. What is it? It's a program that allows them to  
24 rehabilitate their loan, bring it current, get it  
25 removed from their credit bureau rating, and then

1 basically give them a fresh start.

2 Q. In the account notes, you told us earlier there  
3 was a POI of \$100. What would be the point of doing  
4 that?

5 A. Just it would give the individual -- just to  
6 show their interest in paying the debt.

7 MS. MALONE: I will pass the witness.

8 THE COURT: Redirect?

9 MR. RADBIL: Yes, Your Honor.

10 **REDIRECT EXAMINATION**

11 Q. (By Mr. Radbil) Mr. Wyatt, you have been up  
12 there a while, and I will try to keep this brief.

13 That Retail Training Manual that was just  
14 entered --

15 A. Yes, sir.

16 Q. -- do you remember testifying about that at  
17 your deposition?

18 A. I remember some of it, yes, sir.

19 Q. Okay. Do you remember that I asked you in this  
20 case, because we're dealing with the student loan,  
21 that the student loan division --

22 THE COURT: Excuse me one moment.

23 MS. MALONE: Your Honor, may I move that?

24 THE COURT: Yes, please do.

25 MS. MALONE: I know it's mine. Also I

1 would object because I think it's improper  
2 impeachment. There's been no testimony. He just  
3 started in about impeachment.

4 THE COURT: Okay. Let me have you ask the  
5 question again, the last question again.

6 MR. RADBIL: I was asking the witness  
7 whether he remembered testifying that because this  
8 was a student loan the procedures would be different  
9 than in the retail division.

10 THE COURT: Overrule the objection. Do  
11 you remember?

12 A. They would be different. Everyone is given the  
13 manual that you are referring to as a general  
14 procedures manual. And then, at the end of their  
15 training program, or at the end of that session,  
16 they are designated as to which department they go  
17 into. And then they could be given other  
18 information, depending on what kind of business they  
19 had be working.

20 Q. And do you recall that I asked you whether  
21 there was anything expressly mentioning or  
22 referencing educational or student loan collection  
23 in that generic manual?

24 A. I vaguely remember the question, yes, sir.

25 Q. Do you remember your answer?

1 A. No, I don't remember my answer.

2 Q. Your answer --

3 MR. RADBIL: May I read the witness's  
4 answer?

5 THE COURT: Why don't you say, do you  
6 agree your answer was thus and such?

7 Q. (By Mr. Radbil) Do you agree that your answer  
8 was, there was only one page, RAD179, that  
9 references student loans intermediate training?

10 A. That was in the manual, right.

11 Q. And I asked -- do you recall that I asked,  
12 where are the documents that you use for training on  
13 educational or student loan collection?

14 A. Um-hum.

15 Q. And do you remember your response to that  
16 question?

17 A. No, I don't.

18 MS. MALONE: Your Honor, could I ask as a  
19 courtesy for a page number or reference?

20 THE COURT: Yes. There is no reason under  
21 the present federal rules to have to show the  
22 witness what you are referring to in the deposition  
23 before you ask the impeachment question.

24 Nonetheless -- that's a very appropriate  
25 point. But before you refer to a section, give us a



1 page and line so that Ms. Malone can keep up with  
2 you. Okay?

3 MR. RADBIL: Certainly. This is  
4 Plaintiff's Exhibit 2, deposition page 25, line 18.

5 THE COURT: Hang on a second. Let's make  
6 sure Ms. Malone has that.

7 MS. MALONE: Your Honor, Plaintiff's  
8 Exhibit 2 is specifically not admitted.

9 THE COURT: I know. But the deposition is  
10 fair game for asking questions, just to make sure  
11 you have it with the line and page.

12 MS. MALONE: Could you repeat it? I  
13 apologize. I heard Exhibit 2 and got distracted.

14 MR. RADBIL: It's Exhibit 2, page 25, line  
15 18 is where we are on.

16 MS. MALONE: Thank you.

17 Q. (By Mr. Radbil) Your answer, Mr. Wyatt, was:  
18 This looks like a generic set of paperwork that's  
19 given the new hires when it's not been determined  
20 whether they are -- what department they are going  
21 in to.

22 A. Okay.

23 Q. And I asked: Okay. What are the documents  
24 that are specific to the educational or student loan  
25 collection department?

1 Do you remember your response?

2 A. No, I do not remember.

3 Q. Your response was: I'm not the trainer. I'm  
4 not sure what those documents would look like.

5 A. Okay.

6 Q. Do you recall that I asked whether you were  
7 prepared to testify about the guides, handbooks,  
8 policies, and manuals and procedures utilized by RAB  
9 in the performance --

10 THE COURT: Line and page. Line and page.

11 MR. RADBIL: 26.

12 THE COURT: Line?

13 MR. RADBIL: Line 1 through 4.

14 MS. MALONE: Your Honor, I need to make an  
15 objection, but I don't know how to do it without  
16 being too windy. This was covered in the second  
17 deposition, so -- and he was a corporate  
18 representative.

19 THE COURT: Okay. I overrule that  
20 particular objection, but I will say that this has  
21 got to be rebuttal examination. Moreover, and more  
22 importantly, I will not let you just go through and  
23 get this deposition in by question and answer.  
24 There has got to be some impeachment value, and I am  
25 beginning to wonder what that is at this point. I

1 haven't seen anything that necessarily contradicts  
2 what he said on Ms. Malone's examination.

3 MR. RADBIL: Okay.

4 THE COURT: Okay?

5 MR. RADBIL: My point was, I think --

6 THE COURT: Just ask another question.

7 MR. RADBIL: Yes, Your Honor.

8 Q. (By Mr. Radbil) Is it true that, under the  
9 contract between Texas Guaranteed and Regional  
10 Adjustment Bureau, complaints made or lodged by  
11 consumers are required to be reported to Texas  
12 Guaranteed?

13 THE COURT: Before you answer that --

14 MS. MALONE: Object regarding testimony  
15 for exhibits that have not been offered into  
16 evidence, and I don't think it's relevant, Your  
17 Honor.

18 THE COURT: Overruled. I will allow the  
19 question.

20 THE WITNESS: Could you repeat it for me,  
21 please, sir?

22 MR. RADBIL: Sure.

23 Q. (By Mr. Radbil) Is it true that, if consumers  
24 lodged complaints about the way that RAB collects  
25 debts, that RAB is obligated under its contract with

1 Texas Guaranteed to report those disputes or  
2 complaints back to Texas Guaranteed?

3 A. That is correct.

4 Q. And is there a consequence for complaints?

5 A. I'm not sure what the consequence is or if  
6 there is one; I'm not sure.

7 Q. Do you recall whether Texas Guaranteed has the  
8 right to recall those specific accounts?

9 A. I would -- Texas Guaranteed has a right to  
10 recall any account from us for any reason.

11 Q. But specifically, if they receive complaints,  
12 that would be a ground for recalling?

13 A. I don't recall, sir.

14 Q. Okay. Do you recall where there was a  
15 provision in the contract between Texas Guaranteed  
16 and Regional Adjustment Bureau that requires that  
17 Regional Adjustment Bureau maintain complete and  
18 accurate records of each loan assigned to it and its  
19 collection activity, particularly correspondence and  
20 telephone contacts with the debtors or other  
21 parties, as well as those records set forth in 34  
22 CFR Section 682.414(a)(1) for no less than five  
23 years?

24 THE COURT: That's a big question. Why  
25 don't you stop there. I'm not sure where this is

1 going and how this is at issue in this case.

2 Are you aware of this provision that he is  
3 referring to, Mr. Wyatt?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Let's ask another question,  
6 please.

7 Q. (By Mr. Radbil) Are you familiar that the  
8 contract provides that Regional Adjustment Bureau  
9 must close and return to Texas Guaranteed  
10 immediately any account upon which TG or the  
11 contractor has received what TG determines in its  
12 sole discretion to be a valid written or verbal  
13 complaint from the debtor regarding Regional  
14 Adjustment Bureau's collection practices or  
15 activities?

16 A. I believe that to be correct, yes.

17 Q. And the Mini Miranda we talked about before  
18 that Ms. Malone questioned you on --

19 A. Yes, sir.

20 Q. -- where is that Mini Miranda supposed to be  
21 stated?

22 A. At the beginning of the conversation.

23 Q. Is that supposed to be documented in the --

24 A. Yes, sir.

25 Q. -- account notes?

1 A. Yes, sir.

2 Q. And is it supposed to be documented before any  
3 other information in the borrower's account history?

4 A. That is correct.

5 Q. Okay. Are you familiar with the procedures for  
6 handling borrower complaints?

7 A. Yes, sir.

8 Q. Okay. What are those procedures, sir?

9 A. We are supposed to notify Texas Guaranteed  
10 within one day of the complaint. If it's a written  
11 complaint, we're supposed to send a copy of it to  
12 Texas Guaranteed. I believe that's the procedure.

13 THE COURT: Mr. Radbil, I think this is  
14 outside the scope of the examination. We are  
15 getting into new areas. So what I will ask you to  
16 do is wrap up your questions in the next five  
17 minutes. Mr. Wyatt is going to be here if there is  
18 some need to call him. Right now I haven't heard  
19 anything that is part of what's been raised or that  
20 I think is directly relevant to the issues in the  
21 case. So go ahead. And again, I said I will give  
22 you five minutes to wrap up this part of the  
23 examination.

24 MR. RADBIL: Five minutes?

25 THE COURT: Yes.

1 MR. RADBIL: That's fine.

2 Q. (By Mr. Radbil) I think we talked a bit about  
3 the borrower's cease and desist procedures.

4 A. Yes, sir.

5 Q. On the same day a cease and desist is received,  
6 is that supposed to be also communicated to Texas  
7 Guaranteed?

8 A. Yes.

9 Q. And a hold is supposed to be placed on the  
10 account?

11 A. That's my understanding, yes.

12 Q. That means that no money can be collected?

13 A. I don't recall.

14 Q. What does a hold mean on the account?

15 A. That they wish you not to continue collection  
16 efforts at that time.

17 Q. So if a complaint is received, that would stop  
18 you effectively from collecting money?

19 A. Yeah, that's my understanding.

20 Q. Do you recall Regional Adjustment Bureau  
21 sending a letter to the Federal Communications  
22 Commission sometime ago in response to a request for  
23 public comment on whether the law should be changed  
24 to include debt collection calls within the scope of  
25 the TCPA, which is --

1 A. I'm not aware of that letter.

2 Q. You're not? Okay.

3 MR. RADBIL: No further questions at this  
4 time.

5 THE COURT: Mr. Wyatt, you may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness,  
8 please.

9 MR. RADBIL: I would call Robert White in  
10 his capacity as corporate representative for  
11 Regional Adjustment Bureau.

12 THE COURT: He's just been on the witness  
13 stand.

14 MR. RADBIL: She objected that he was  
15 testifying in his individual capacity in response to  
16 some of the questions.

17 THE COURT: I'm not going to permit that  
18 at this point. You've had him on direct for a long  
19 period of time. Call your other witness, please,  
20 your next witness other than him.

21 MR. RADBIL: I call Timothy White.

22 THE COURT: All right. Mr. White, if you  
23 will come up here, please.

24 Raise your right hand.  
25



1                                   **TIMOTHY WHITE,**  
2   having been first duly sworn, testified as follows:

3                   THE WITNESS:   I do.

4                   THE COURT:   Take a seat.   And it looks  
5   like you don't have any cups over here, but there  
6   are cups for some water if you want some.

7                   THE WITNESS:   Thank you.

8                                   **DIRECT EXAMINATION**

9   Q.    (By Mr. Radbil)   Would you please state your  
10   full name for the jury?

11   A.   Timothy Gilbert White.

12   Q.   Where do you currently live?

13   A.   Dallas, Texas.

14                   THE COURT:   Can you pull that microphone a  
15   little closer to you?

16                   THE WITNESS:   Sure.

17                   THE COURT:   Thank you.

18   Q.    (By Mr. Radbil)   And what do you do for a  
19   living?

20   A.   I'm a psychologist.

21   Q.   Are you currently employed?

22   A.   Yes.

23   Q.   Where are you currently employed?

24   A.   With the State of Texas.

25   Q.   And what do you do for the State of Texas?

1 A. I work for The Division for Blind Services as a  
2 psychologist. I do vocational and psychological  
3 evaluations for blind persons.

4 Q. What does that mean?

5 A. I help blind people find work.

6 Q. Do you have any other jobs, or is that your  
7 only employment currently?

8 A. I have another job.

9 Q. What is your other job?

10 A. I -- I also work for Simple Surrogacy.

11 Q. What is that? Can you describe that to the  
12 jury, please?

13 A. It's a surrogacy agency that matches potential  
14 surrogate mothers with intended parents.

15 Q. And for Simple Surrogacy, you practice  
16 psychology, or how is --

17 A. I practice with my LPC license. I do  
18 psychosocial interviews and assessments.

19 Q. Of children or of adults?

20 A. Adults.

21 Q. Adults?

22 A. Only.

23 Q. Are you required to be licensed to practice  
24 psychology in the State of Texas?

25 A. Yes.

1 Q. Do you hold a license currently of any kind?  
2 Do you practice psychology in the State of Texas?

3 A. My practice in psychology is done under my  
4 State position, which is -- is titled psychologist.  
5 If you're a government psychologist, a license isn't  
6 required -- or rather, a master's license will  
7 suffice.

8 Q. Can you describe your educational history for  
9 the ladies and gentlemen of the jury, please,  
10 briefly?

11 A. I went to high school at Hargrave High School  
12 in Huffman, Texas. I graduated with a Bachelor's in  
13 Psychology from the University of Texas at Austin.

14 I graduated with my Master's in Counseling  
15 Psychology from Ball State University in Muncie,  
16 Indiana. I also graduated in 2011 with another  
17 master's degree, MS in Research Psychology from  
18 Texas A&M University-Commerce. And in that same  
19 year, I graduated from same with a Ph.D in  
20 Educational Psychology.

21 Q. Have you ever been involved in a lawsuit other  
22 than this particular lawsuit?

23 A. No.

24 Q. Have you ever been convicted of a crime?

25 A. No.

1 Q. Have you ever filed a complaint against any  
2 credit card company?

3 A. No.

4 Q. Against any collections agency?

5 A. No.

6 Q. Or for that matter, any person or entity  
7 besides this case?

8 A. No.

9 Q. Can you explain briefly for the ladies and  
10 gentlemen of the jury the debt that Regional  
11 Adjustment Bureau attempted to collect from you?

12 A. Two student loans.

13 Q. You used those student loans to finance your  
14 education I presume?

15 A. Yes.

16 Q. Your higher education, or was it undergraduate?

17 A. Part of my undergraduate education and my first  
18 graduate degree.

19 Q. Okay. And then the remainder you paid out of  
20 pocket or --

21 A. Yes.

22 Q. When you were in undergraduate school, did you  
23 hold any jobs?

24 A. Yes, I've always had two or three jobs, even  
25 while I was in school.

1 Q. What did you do in undergraduate school?

2 A. I worked for the State Hospital.

3 Q. Which State Hospital?

4 A. Austin State Hospital.

5 Q. Doing what?

6 A. I was a case manager at the Center for the Deaf  
7 and sign language interpreter.

8 Q. When you were getting your master's degrees,  
9 did you also work?

10 A. Yes.

11 Q. What did you do during that period?

12 A. For my first master's, the first year I was a  
13 graduate assistant in a paid position, and the  
14 second year I was in a paid internship.

15 Q. Which paid internship?

16 A. At the Dunn Mental Health Center in Winchester,  
17 Indiana, as a therapist intern.

18 In my second master's, I worked -- well, I  
19 worked at several places. I worked for an insurance  
20 company and also for a clinical trials site.

21 Q. And then when you were getting your Ph.D, did  
22 you also work?

23 A. Yes.

24 Q. Where did you work during that time?

25 A. Well, I took a few years to earn my Ph.D. And

1 I had also worked for an insurance company during  
2 that time, also in research at the University of  
3 Texas Medical Branch, and also teaching at the  
4 University.

5 Q. In Galveston?

6 A. No, teaching at the university where I earned  
7 my Ph.D, in Commerce, Texas.

8 Q. The proceeds of the loans that you used for --  
9 or the proceeds of the educational loans, did you  
10 actually use those to pay for your education?

11 A. Yes.

12 Q. Did you use any of the proceeds for business  
13 purposes, commercial purposes?

14 A. No.

15 Q. So to be clear, just to pay tuition and  
16 personal living expenses?

17 A. Yes.

18 Q. Are you familiar with the terms of the student  
19 loans that you took?

20 A. Yes.

21 Q. Do you know whether the terms required you to  
22 make monthly payments?

23 A. Yes, they do.

24 Q. And did you believe that your loans would come  
25 due and payment would be triggered prior to your

1 completion of your Ph.D?

2 A. No. That was not the information that I  
3 received.

4 Q. What was your understanding?

5 A. My understanding was that -- was that a  
6 combination of forbearance and in-school deferment  
7 would have allowed me to complete my degree before  
8 my loans came due.

9 Q. Did you actually default on your loans by  
10 failing to make the monthly payments?

11 A. Yes.

12 MR. RADBIL: I would like to show the  
13 witness, if I may, Plaintiff's Exhibit Number 15.

14 THE COURT: All right. That is  
15 preadmitted. Okay.

16 Q. (By Mr. Radbil) Do you recognize that  
17 document?

18 A. Yes.

19 Q. What is it?

20 A. It's a notice dated November 4th, 2011, from  
21 Texas Guaranteed Student Loan Corporation.

22 Q. Would you mind reading the first two paragraphs  
23 into the record, please?

24 A. "Texas Guaranteed Student Loan Corporation paid  
25 the claim for your defaulted consolidated student

1 loan on February 2nd, 2010. However, even though  
2 your loan is in default, you do still have options  
3 available to remove your loan from default and  
4 repair your credit rating."

5 "TG has referred your account to Regional  
6 Adjustment Bureau for further collection. Please  
7 contact Regional Adjustment Bureau at the following  
8 address and telephone number to discuss your  
9 account, your available options to remove your loan  
10 from default, and to establish your satisfactory  
11 repayment arrangements."

12 Q. Did you reach out per the instructions in that  
13 letter and try to take action?

14 A. No, I did not.

15 Q. When you received that letter, did you try to  
16 contact Texas Guaranteed to arrange for a payment  
17 plan?

18 A. Yes. This letter came months after I had  
19 already talked with Regional Adjustment Bureau with  
20 no success, so this notice came much later than  
21 that. I did try to talk with Texas Guaranteed  
22 again. They wouldn't take my calls or communicate  
23 with me in any way. They simply directed me to RAB.

24 Q. When was the first time that you communicated  
25 with Regional Adjustment Bureau?



1 A. I think that was -- well, it was February of  
2 2011, definitely, on or around the 15th.

3 Q. Do you remember the person's name that you  
4 talked to at Regional Adjustment Bureau?

5 A. I -- I talked actually to several people, I  
6 think three different people. But the person I  
7 spoke with at length was Karen Nelson.

8 Q. And the first time you and Karen Nelson spoke,  
9 do you remember that conversation?

10 A. Yes, I do.

11 Q. Can you tell us about that conversation?

12 MS. MALONE: Your Honor, I'm going to  
13 object to hearsay.

14 THE COURT: Your response?

15 MR. RADBIL: The witness is unavailable,  
16 Your Honor.

17 THE COURT: Okay. It's hearsay, and  
18 that's not enough. So maybe you could establish  
19 that this was an employee at some level. I just  
20 need a little more information about who she is and  
21 why it might possibly be admissible.

22 MR. RADBIL: Okay.

23 Q. (By Mr. Radbil) Who is Karen Nelson?

24 A. She identified herself as a collection agent  
25 from RAB.

1 Q. Okay. And --

2 THE COURT: Overrule the objection. I  
3 will allow the testimony.

4 MR. RADBIL: Thank you, Your Honor.

5 Q. (By Mr. Radbil) Can you describe that  
6 conversation?

7 A. Yes. I -- I spoke with her. I believe I  
8 called her on that occasion and asked her not to  
9 call my work number any longer. I did expressly  
10 state that I would get in trouble at work if she  
11 were to continue calling, and also that the number  
12 didn't come directly to me so I wouldn't pick up if  
13 she called.

14 Q. At the time you were working at Simple  
15 Surrogacy; is that correct?

16 A. Yes.

17 Q. And did Simple Surrogacy have a main telephone  
18 line?

19 A. Yes.

20 Q. And they also gave you an extension that would  
21 go to a voicemail service for you?

22 A. Yes.

23 Q. Were you allowed to use either the direct  
24 number of Simple Surrogacy for personal matters or  
25 the direct number with the extension to your

1 voicemail for personal matters?

2 A. Absolutely not.

3 Q. Okay. What is Simple Surrogacy's reputation  
4 amongst its peers, if there are similar  
5 organizations?

6 MS. MALONE: Objection, relevance.

7 THE COURT: Sustained. Ask another  
8 question, please.

9 Q. (By Mr. Radbil) After you requested -- well,  
10 do you think that you provided plain notice to Karen  
11 Nelson, made it clear not to call those numbers?

12 A. Yes, I did. I said that exactly. And I asked  
13 her not to call my cell phone either.

14 Q. Did you provide any contact information that  
15 she could reach you?

16 A. I did. I updated my address with her and gave  
17 her my landline at my home and the hours to call me,  
18 when she could reach me.

19 Q. When Karen Nelson would call you, what was the  
20 purpose of those calls?

21 A. To collect a debt.

22 Q. Do you recall how many times you actually spoke  
23 with Karen Nelson?

24 A. I recall three occasions, although one was very  
25 brief.

1 Q. Can you explain in a practical sense how the  
2 forwarding system would work with the extension you  
3 were given at Simple Surrogacy?

4 A. I'm not an expert, but I do know that the calls  
5 come in to Simple Surrogacy, and they are stored  
6 there. They are accessible by the staff at Simple  
7 Surrogacy. It's just a courtesy that they forward  
8 them to your cell phone.

9 Q. Through a central mailbox system, or is it  
10 unique to you? Is it private?

11 A. No, it is not private. And they informed me  
12 that they do, in fact, listen to calls. And this  
13 was part of informing me that I should not use the  
14 number for personal calls, because they do listen to  
15 them. If there's someone in distress or there is an  
16 emergency, they need to be able to listen to the  
17 messages.

18 Q. So do you have reason to believe that your  
19 employer or coworkers at Simple Surrogacy knew or  
20 may have understood that Regional Adjustment Bureau  
21 was calling you at your Simple Surrogacy numbers at  
22 your place of employment to collect a debt?

23 A. Yes.

24 Q. Did you ever discuss that or bring that issue  
25 to light with your supervisor?

1 A. No.

2 Q. Why?

3 A. I -- I didn't want them to know that -- the  
4 debt collector was calling that number, that it was  
5 a personal reason that somebody was calling. I  
6 didn't bring it up. And I valued my job, as it was  
7 my only source of income at the time.

8 Q. During the time that Regional Adjustment Bureau  
9 was placing calls to the Simple Surrogacy numbers,  
10 after you told them to stop, were you still making  
11 payments on the loans?

12 A. Yes. I failed to make arrangements -- or  
13 rather, didn't work out with Regional Adjustment  
14 Bureau. I -- and I -- I -- I believed in the first  
15 phone call that we had set up an arrangement, and in  
16 the second I realized we didn't. So I took it upon  
17 myself to pay Texas Guaranteed directly on their  
18 website, which I could. And I paid them  
19 consistently every month what I could afford, which  
20 was \$300 a month, to be consistent.

21 Q. What happened when you tried to work out  
22 anything with Regional Adjustment Bureau in terms of  
23 payment plans?

24 A. Ms. Nelson asked me to send \$100, which I can  
25 understand good faith. And I told her, you have a

1 hard job. I understand if you need \$100 to show  
2 good faith, that's fine, but I'm interested in  
3 setting up a payment plan for every month that I can  
4 pay to bring my loan current to stay out of the  
5 default status. She was not willing to do that.

6 Q. What happens if you stay in default status,  
7 what was the risk?

8 A. I would lose my license, which means I would  
9 lose my job.

10 Q. And how many years did you go to school to gain  
11 that license?

12 A. Over 20 years.

13 Q. If Simple Surrogacy had terminated you for  
14 using their personal -- or using their business  
15 lines for personal matters -- well, let me go back.

16 Is that something that you legitimately thought  
17 you could be terminated for?

18 A. Yes. I was terrified that I was going to be  
19 terminated. I was waiting for that call any day to  
20 tell me I was fired. And if I was fired, then I  
21 would have lost my only source of income. If I lost  
22 my income, RAB certainly would not be paid, and they  
23 would keep me in default, preventing me from keeping  
24 my license or getting another job. And it was a  
25 pretty scary economy, so I was -- I was constantly

1 worried about that. And that would have meant that  
2 the 20 years that I spent trying to become a  
3 psychologist would have been gone. It would have  
4 been a missed opportunity.

5 Q. I think what is important in this case is the  
6 impact of those calls and the failure to stop  
7 calling your place of employment after you requested  
8 that, I think that's probably what the ladies and  
9 gentlemen of the jury and everybody is interested  
10 in. So can you just describe in your own words how  
11 it affected you or impacted you?

12 A. Well, I was in a constant state of anxiety and  
13 often panic. I didn't know when these people were  
14 going to do something new. They continued to call  
15 my employer, and I told them it was a problem. They  
16 put my job in jeopardy, but they continued to call.  
17 They threatened to take my degree away before it was  
18 even earned; to do everything in their power -- and  
19 not by education. She stated the purpose was to  
20 take away these things, to take away my license, my  
21 degree, and even my Social Security fund if  
22 something like that would have happened. This is  
23 the only income that I had at the time.

24 I was trying to get through school with only,  
25 you know, less than a year to go, and so I had that

1 hanging over my head constantly. I did not know  
2 what these folks would do next. If I had been -- if  
3 there had been any way to make a payment plan with  
4 them, I would have.

5 I finally took it upon myself to do that, but  
6 they refused to do that. And not only would I have  
7 lost my license, I had a family to support. I still  
8 do. I have an autoimmune inflammatory disease, and  
9 stress sets that off.

10 At the time, it was so awful that my scalp was  
11 actually seeping blood. I -- one of my eyes was so  
12 swollen, and I have to use medication when that  
13 happens. I had no vision in one eye, so I was  
14 typing my reports with one eye and working three  
15 jobs later that year while I went to school, all  
16 while trying to collect research for dissertation  
17 and defend that and finish my degree. So it was --  
18 my life was constant anxiety and often turned into  
19 panic.

20 THE COURT: Let's have a question, please.

21 Q. (By Mr. Radbil) During that period, was the  
22 anxiety and the feelings you felt, was that  
23 something every day, or was it something that now  
24 and again would trouble you?

25 A. It was every day, all day long, and interfered



1 with my work and -- and school.

2 Q. Were you ever expecting to have an encounter  
3 with anybody at Simple Surrogacy regarding the  
4 calls?

5 A. Yes. I expected the director, Stephanie, to  
6 call me any day, every day. You know, especially if  
7 I saw a call from her, that would set off panic, I  
8 thought for sure that that would be the call and she  
9 would tell me that I was fired.

10 Q. Do you think you would have been able to find  
11 another job in order to make ends meet if you lost  
12 your job at Simple Surrogacy at that point?

13 THE COURT: I think that's a little  
14 speculative.

15 A. No.

16 THE COURT: Could you ask another  
17 question, perhaps maybe more specific, something  
18 within his personal knowledge as opposed to a guess?

19 Q. (By Mr. Radbil) Were you concerned that your  
20 life's work was in jeopardy?

21 A. Yes. If I did find a job, it wouldn't have  
22 been for long because my license -- I was about to  
23 lose my license.

24 Q. How many years did you go to school for your  
25 license total?

1 THE COURT: I think he said 20 years.

2 MR. RADBIL: 20.

3 THE WITNESS: 12 years altogether,  
4 collectively; it was over 20 years, but 12 years of  
5 education.

6 Q. (By Mr. Radbil) Are you easily upset in terms  
7 of character? Do things bother you? Do you get  
8 emotional at the drop of a hat? What type of person  
9 are you with respect to handling stressful  
10 situations?

11 A. No, I do testing and assessment. I have worked  
12 in prison and the State Hospital. I don't get upset  
13 easily. I have worked with CPS clients. No, not  
14 much rattles me -- well, until now.

15 Q. In terms of rattling, how would you compare the  
16 impact that -- the thought of losing basically your  
17 livelihood had on -- had on you compared to if  
18 there's another traumatic event in your life that  
19 you can compare it to. I don't know. I'm just  
20 trying to give the best sense I can to the ladies  
21 and gentlemen of the jury.

22 THE COURT: I think you made the question  
23 clear. How would you answer that?

24 THE WITNESS: Could you restate the  
25 question?

1 THE COURT: I will read it back for you.

2 (Record read back by the Judge.)

3 A. I don't think I can. I've -- I've always had  
4 pretty good coping skills, so I didn't have this  
5 kind of anxiety before. It never happened. I have  
6 nothing to compare it to. I have always been able  
7 to stay in control.

8 Q. (By Mr. Radbil) And have you sought any  
9 counseling or treatment as a result?

10 THE COURT: Excuse me. Ms. Malone?

11 MS. MALONE: Objection, Rule 37. The  
12 specific question on this was not supplemented to  
13 change that answer, and the answer was none at the  
14 time.

15 THE COURT: Approach the bench, please.

16 (The following discussion held at the bench.)

17 THE COURT: Ms. Malone, what's your  
18 objection?

19 MS. MALONE: Sure. I asked him a specific  
20 question regarding treatment for this matter and if  
21 he was going through any treatment or if there was  
22 any further, in Interrogatory 33, asking for current  
23 or future psychiatric care, and his answer was, No.  
24 No.

25 MR. RADBIL: I don't know the answer.

1 THE COURT: I'm assuming you must be  
2 looking for something favorable or you wouldn't have  
3 asked it.

4 MR. RADBIL: Sure.

5 THE COURT: Do you think he's going to say  
6 none?

7 MR. RADBIL: No.

8 THE COURT: That's the good faith answer,  
9 so I would sustain the objection.

10 MS. MALONE: Thank you.

11 (Discussion at bench concluded.)

12 THE COURT: Sustain the objection. Go  
13 ahead, Mr. Radbil.

14 Q. (By Mr. Radbil) Is there anything you can  
15 think of in retrospect that you could have done to  
16 have prevented or worked out an agreement to stop  
17 the calls to Simple Surrogacy?

18 A. No. I requested more than once that they do  
19 that.

20 Q. That they do what?

21 A. That they stop calling Simple Surrogacy. I  
22 can't imagine anything that I could have done. I  
23 couldn't have stopped them from taking my license.

24 Q. How much money were you sending to Texas  
25 Guaranteed directly?

1 A. \$300 a month.

2 Q. And Regional Adjustment Bureau you said asked  
3 you for a 100-dollar good faith payment?

4 A. Yes, sir.

5 Q. And you gave them an alternative number to call  
6 you?

7 A. An alternative number.

8 Q. Did you give them information that they could  
9 actually contact you with?

10 A. Yes.

11 Q. And what is the status of your loans today?

12 A. I was able to reconsolidate with only one  
13 option. And to do that I had to accept the \$40,000  
14 in fees that were assessed during the time that  
15 Regional Adjustment Bureau managed the loan and  
16 wouldn't work with me on a repayment schedule. So I  
17 had to accept that, and now that's part of my  
18 student loan balance, \$40,000 in excess of what it  
19 already was. But I do make payments every month of  
20 \$409. They are about to go up to \$1,100 a month  
21 next month. And I'm out of default status. And I  
22 have been paying them for a year.

23 THE COURT: Mr. Radbil.

24 Q. (By Mr. Radbil) Do you default on many loans?

25 A. No.

1 Q. Have you defaulted on any loans other than  
2 these two specific student loans?

3 A. Yes.

4 Q. Can you describe which loans you defaulted on  
5 besides these?

6 A. There were two loans. And in order to pay  
7 Texas Guaranteed, I had -- I had to make a choice of  
8 either keeping my license and keeping my job or  
9 making all the payments, which I wasn't able to do  
10 at the time. So there were two loans.

11 Q. And what are the status of those two loans  
12 currently?

13 A. One has since been paid, and the other is not.

14 Q. Okay. Do you plan to pay back all of your  
15 loans?

16 A. Yes.

17 Q. Are you looking for a free ride or free money,  
18 or did you intend to take money for education  
19 without ever paying it back?

20 A. No.

21 Q. Had you been able to work out a reasonable  
22 payment agreement with Regional Adjustment Bureau,  
23 would you have willingly done so?

24 A. Yes. And I wouldn't have had any problems with  
25 other loans.

1 MR. RADBIL: I don't think I have any  
2 further questions for the witness at this time.

3 THE COURT: All right. Thank you very  
4 much.

5 Cross-examination, Ms. Malone.

6 MS. MALONE: Yes, ma'am.

7 **CROSS-EXAMINATION**

8 Q. (By Ms. Malone) Good afternoon, Dr. White.

9 A. Good afternoon.

10 Q. Let's start off with one point that I would  
11 like to clear up with you.

12 You don't actually have a license as a licensed  
13 psychologist, correct?

14 A. No. I'm in the process of earning licensure as  
15 a psychologist.

16 Q. So you actually have a licensed professional  
17 counselor degree, correct?

18 A. Yes.

19 Q. And that's a different sort of license that's  
20 recognized in the State of Texas.

21 A. Right.

22 Q. You have to have at least a master's degree to  
23 get that particular license, but there are Ph.D  
24 LPC's, as we call them, right?

25 A. Yes.

1 Q. So you have been that since December of 2011,  
2 correct? You're a Ph.D who holds an LPC, right?

3 A. Correct, yes.

4 Q. Let me back up with you for just a second. On  
5 that letter that you talked with Mr. Radbil from  
6 Texas Guaranteed, which I believe is in front of  
7 you, sir -- do you still have it?

8 A. Yes.

9 Q. Does it indicate you to that in fact they are  
10 looking for you to pay a loan that you had already  
11 defaulted on, correct?

12 A. That's what's indicated in the loan.

13 Q. That's what happened, isn't it, Dr. White? You  
14 had a student loan with another entity and defaulted  
15 on it, right? You told me this is your deposition;  
16 is that correct?

17 A. Yes.

18 Q. And that loan was then, as it was guaranteed by  
19 the State of Texas, picked up by the State of Texas,  
20 and they are still trying to collect from you in  
21 that letter; is that correct?

22 A. Yes.

23 Q. And the amount that they were looking for was  
24 \$148,000; is that correct?

25 A. I don't recall.



1 Q. Do you recall receiving a letter from Regional  
2 Adjustment Bureau about the details of the loan --

3 A. No.

4 Q. -- of the debt. Would you turn with me to Tab  
5 Number 2, sir, in that black binder right in front  
6 of you?

7 THE COURT: Let's make sure we are clear  
8 on what exhibit we're referring to.

9 Q. (By Ms. Malone) Do you recognize this letter,  
10 Dr. White?

11 A. Yes.

12 Q. Okay. And is this a letter that you received  
13 from Regional Adjustment Bureau?

14 A. Yes.

15 MS. MALONE: At this time I would offer  
16 Defendant's Exhibit 2, Your Honor.

17 THE COURT: Mr. Radbil?

18 MR. RADBIL: No objection. Pardon me,  
19 Your Honor. No objection.

20 THE COURT: All right. Which  
21 Exhibit Number, Defense 2?

22 MS. MALONE: Yes, ma'am.

23 THE COURT: Defense 2 is admitted.

24 MS. MALONE: Thank you, Your Honor.

25 (Defendant's Exhibit No. 2 admitted into evidence.)

1 Q. (By Ms. Malone) Dr. White, on this letter it  
2 indicates that it was the Texas Guaranteed Student  
3 Loan Corporation. Can you tell us what the balance  
4 of the first loan was?

5 A. \$72,783.03.

6 Q. There is a second loan also indicated. Can you  
7 tell us what the balance of that loan was?

8 A. \$76,017.77.

9 Q. That's not my strong suit, but that's about  
10 148,000 and change, correct?

11 A. Yes.

12 Q. According to this loan, to the letter that we  
13 were look at before, Texas Guaranteed paid for this  
14 in February of 2010, correct?

15 A. I don't recall that.

16 Q. The letter in front of you, sir, indicates that  
17 Texas Guaranteed paid your student loan in February  
18 of 2010, is that correct, sir?

19 A. That's correct, on this letter that I received  
20 in 2011.

21 Q. And you indicated to me that you did try to  
22 reconsolidate these loans back in 2008; isn't that  
23 correct?

24 A. Yes.

25 Q. And you were denied your request at that time;

1 isn't that correct?

2 A. Yes.

3 Q. And you never again did that until I guess  
4 apparently recently; is that correct?

5 A. That's correct.

6 Q. Okay. Let's talk a little bit about these  
7 phone calls. When you had these telephone calls  
8 with Karen Nelson, you called her back on your cell  
9 phone, is that correct, sir?

10 A. Yes.

11 Q. And your cell records indicate two calls from  
12 you to the RAB phone number; isn't that correct?

13 A. Yes.

14 Q. So there were two conversations you had with  
15 Ms. Nelson, correct?

16 A. Yes, I called her.

17 Q. Right. And those all occurred in February of  
18 2011, correct?

19 A. Yes.

20 Q. You also indicated in your account notes -- or  
21 in the account notes there's an indication that you  
22 authorized RAB to speak with your spouse, Terry,  
23 correct?

24 A. That's not correct.

25 Q. That's in the notes. Whether you agree with it

1 or not, you would agree that's what Mr. Wyatt read.

2 A. I don't agree with that.

3 Q. Okay. Well, let me -- I think you are  
4 misunderstanding my question, so let me rephrase it.

5 I am not saying you agree the content is  
6 correct, I'm saying that that is in the account  
7 notes that Mr. Wyatt read to us earlier. Do you  
8 recall that testimony, sir?

9 A. I recall the testimony.

10 Q. Okay. And you do, in fact, have a spouse named  
11 Terry, correct?

12 A. I have a partner named Terry.

13 Q. I'm sorry. You have -- you are --

14 A. We're not married.

15 Q. You're not married. You have a male partner --

16 THE COURT: Slow down a little bit.

17 MS. MALONE: I'm sorry, Judge. It's late  
18 in the day.

19 Q. (By Ms. Malone) You have a male partner that  
20 you refer to as Terry, correct, because you are not  
21 allowed to be legally married in Texas, right?

22 A. Right.

23 Q. And the two of you have adopted a child,  
24 correct?

25 A. No.

1 Q. You didn't adopt a child?

2 A. No.

3 Q. Did you tell me in your deposition that you had  
4 adopted a child?

5 A. No, I didn't. I told you that we completed a  
6 surrogacy.

7 Q. I'm sorry?

8 A. We completed a surrogacy; there was no  
9 adoption.

10 Q. I guess I don't understand surrogacy.

11 THE COURT: I'm not sure where there this  
12 is going, but let's move on to the next topic,  
13 please.

14 Q. (By Ms. Malone) Mr. White, were you in the  
15 process of, during the time these calls were going  
16 on, did you have a small child with you that you  
17 were responsible for?

18 A. Yes.

19 Q. And during the period of time that these calls  
20 occurred in roughly the one-month period of time  
21 from the middle of February, middle of March 2011,  
22 were you able to spend time with your child unless  
23 you had to work?

24 A. Yes, some time.

25 Q. Okay. And you also indicated to me that you

1 had not missed any time with your family as a result  
2 of these calls; isn't that correct?

3 A. If you mean as a result of being on the  
4 telephone?

5 Q. Yes, ma'am -- sir, I'm sorry, I apologize.

6 A. During the conversation --

7 Q. Yes, sir.

8 A. -- that occurred on the phone, no.

9 Q. You also indicated you were able to spend  
10 Easter, St. Patrick's Day, Valentine's Day, those  
11 holidays with your family during these times; is  
12 that correct?

13 A. I don't remember a whole lot of celebration,  
14 no.

15 Q. Do you remember testifying that you were able  
16 to spend holidays with your family, to do things  
17 with your family?

18 A. Yes, I was able to do things with them.

19 Q. Okay. And you didn't miss any birthdays or  
20 anniversary dates as a result of these calls, isn't  
21 that correct, sir?

22 A. By missed, I was home. It might have only been  
23 30 minutes or an hour during the day, but I was  
24 present part of the day.

25 Q. Okay. You also were not docked any pay as a

1 result of the calls; isn't that true?

2 A. That's true.

3 Q. You were not reprimanded --

4 A. No.

5 Q. -- is that true?

6 A. That's true.

7 Q. It had no effect on completing your coursework;  
8 isn't that true?

9 A. Barely; yes, I completed it.

10 Q. And you also were able to do your teaching  
11 assignments?

12 A. Actually, no. I had to drop a class that I was  
13 teaching.

14 Q. Do you recall, Mr. White, in your deposition  
15 that I asked you: Were you able to do your teaching  
16 assignments during this period of time?

17 And at that time your answer was yes?

18 A. Yes. I was able to teach one class, not two.

19 Q. Okay. But at the time of your deposition, your  
20 answer was simply yes; was that correct, sir?

21 A. I answered the question as I understood it,  
22 yes.

23 Q. You also testified that the only real harm was  
24 that it might have caused you some problem with  
25 Simple Surrogacy; isn't that correct?

1 A. Yes.

2 Q. In fact, sir, no one at Simple Surrogacy ever  
3 talked to you about these phone calls; is that  
4 correct?

5 A. Thank God, no.

6 Q. No one said to you, Mr. White, we have an issue  
7 with you or we have a concern with you; is that  
8 correct?

9 A. That's correct.

10 Q. And in fact, Simple Surrogacy wasn't actually  
11 your employer, they were a contract employee  
12 position you had; isn't that true?

13 A. Yes, contract employment. I've been on their  
14 website for four years.

15 Q. All right. And isn't it true, sir, that, in  
16 fact, in your answers to discovery in this case, you  
17 identified only Texas A&M University-Commerce as  
18 your employer?

19 A. No.

20 Q. In your interrogatory answers you identified  
21 only Texas A&M University-Commerce, isn't that true,  
22 sir?

23 A. I think the question as I -- I was trying to  
24 understand if you meant that contract employment was  
25 employment. I consider it employment since my



1 livelihood depended on it.

2 Q. That's not my question, sir. My question is:  
3 Isn't it true that during the course of discovery in  
4 this case, the only answer that you provided  
5 regarding your place of employment was Texas A&M  
6 University-Commerce.

7 A. If that -- if that is what I said, I was  
8 incorrect.

9 Q. Isn't it also true, sir, that you testified in  
10 your -- testified that you were not aware of any  
11 current economic damages at the time of your  
12 deposition?

13 A. No, and I --

14 THE COURT: One moment. I'm sorry,  
15 Doctor. Let me just -- let's go line and page just  
16 like we had Mr. Radbil do. So on that last  
17 question, start over again, line and page, and then  
18 ask the question.

19 MS. MALONE: Yes, ma'am.

20 Q. (By Ms. Malone) Page 125, beginning at line  
21 18. Do you recall testifying in your deposition  
22 that you had not been out of pocket any money as a  
23 result of these events?

24 A. Out of pocket?

25 Q. Yes, sir.

1 A. No.

2 Q. That's not true?

3 A. It's actually not true. I found out that I did  
4 lose \$5,000 by not teaching that class.

5 Q. Okay. Are you denying that that was your  
6 testimony at the time of the deposition?

7 A. No, I am not. That was my testimony.

8 Q. Is it also true that you didn't have any reason  
9 to believe that you were denied a raise or other  
10 bonus as a result of these calls?

11 A. Again, it was not because of calls, themselves.  
12 It was their effect on my life. I was not denied  
13 anything because of the phone calls.

14 Q. Okay. And Dr. White -- page 126, Counsel, line  
15 4 -- isn't it true that you have no reason -- that  
16 you have no reason specifically to believe that  
17 anyone -- I'm sorry, line 20, I apologize. You  
18 don't know for sure that anyone actually listened to  
19 the calls; isn't that true?

20 A. No.

21 Q. That's true?

22 A. Yeah, that's true, I don't know.

23 THE COURT: When you're talking about  
24 anyone, you're talking about people at Simple  
25 Surrogacy?

1 MS. MALONE: Yes, ma'am. Thank you.

2 THE COURT: Okay.

3 Q. (By Ms. Malone) And you know that no one  
4 brought it to your attention at Simple Surrogacy,  
5 correct?

6 A. Correct.

7 Q. Now, when you had these conversations with  
8 Ms. Nelson where she left a voicemail to you, isn't  
9 it true that you understood after you had spoken  
10 with her and she left you a voicemail that you  
11 understood she was a debt collector from RAB?

12 A. That's true.

13 Q. And isn't it true that in the conversations you  
14 had with any of the collectors from RAB, no one  
15 called you any sort of derogatory names.

16 A. No.

17 Q. Is that true?

18 A. Not to my recollection, no.

19 Q. So it is true. I think we have a double  
20 negative going, Dr. White. Is it a true statement  
21 that no one called you derogatory names?

22 A. That's a true statement.

23 Q. Is it a true statement that no one cussed you  
24 out?

25 A. That's a true statement.

1 Q. It is it a true statement that no one  
2 physically threatened you?

3 A. That's a true statement.

4 Q. Is it a true statement that no one threatened  
5 your home?

6 A. That's a true statement.

7 Q. Isn't it true that they told you that the IRS  
8 could offset any funds that you had?

9 A. Yes.

10 Q. And you knew that to be true already?

11 A. Yes.

12 Q. Because that had happened, correct?

13 A. Yes.

14 Q. And isn't it also true that you knew that a  
15 government agency could, in fact, revoke your  
16 license or not renew your license if you were  
17 defaulted on a student loan?

18 A. No.

19 Q. You didn't know that?

20 A. No.

21 Q. Dr. White, are you familiar with the Texas  
22 State Board of Examiners for Counselors?

23 A. Yes.

24 Q. And are you required under their rules and  
25 guidelines to be familiar with the ethical rules and

1 guidelines?

2 A. I'm sorry, I didn't understand that -- that  
3 that had been done with my license. I understand it  
4 can be done. I'm sorry. I misunderstood the  
5 question.

6 Q. So you understand that under the Texas State  
7 Board for Examiners of Psychologists there is a  
8 specific provision that says your license can be not  
9 renewed if you fail to or if you default on  
10 educational loans. That's the State of Texas  
11 requirement for your licensure, correct?

12 A. Yes.

13 Q. And is it also true, sir, that, in your  
14 evaluations as a psychologist for, I guess folks  
15 with -- blind folks now, right, at the state, you  
16 are familiar with the Diagnostic and Statistical  
17 Manual, correct?

18 MR. RADBIL: Objection, Your Honor.

19 THE COURT: Slow down. The Diagnostic and  
20 Statistical Manual, is that what you were saying?

21 MS. MALONE: Yes.

22 THE COURT: Mr. Radbil?

23 MR. RADBIL: I think we addressed this in  
24 the pretrial conference.

25 THE COURT: I'm going to sustain the

1 objection. We can talk about that at the close of  
2 today. Let's move on to the next topic.

3 MS. MALONE: Okay.

4 Q. (By Ms. Malone) Are there any particular areas  
5 that you should be concerned about as causing stress  
6 in a person's life, like having financial  
7 difficulties?

8 A. In any person's life?

9 Q. Sure.

10 A. Yes, that's a stressor.

11 Q. Okay. And is it a stressor in a person's life  
12 to think they might lose their license?

13 A. Certainly, yes.

14 Q. And is it stress in a person's life to think  
15 that there is a large debt, \$148,000, that they  
16 don't know how to pay back?

17 A. If they don't have a plan to pay it back, that  
18 would be a significant stressor.

19 Q. Isn't it true, Dr. White, that the fact that  
20 someone didn't say, I'm a debt collector, on the  
21 phone wasn't really the concern here, it was the  
22 problems with your license?

23 A. I'm sorry, there were a lot of negatives.  
24 Could you rephrase the question?

25 Q. You know, I will try.

1 Dr. White, would you agree with me that you  
2 were much more concerned about losing your license  
3 than whether or not someone used the phrase, "debt  
4 collector," in a message?

5 A. I was concerned about both.

6 Q. Your testimony is that someone not using the  
7 phrase "debt collector" in two messages caused you  
8 to have this stressful situation that you have  
9 described for us, is that correct, sir?

10 A. That's not the sole cause, no.

11 Q. In fact, it's not -- the real problem here is  
12 you were going to lose your license if you didn't  
13 work out something with Texas Guaranteed, isn't that  
14 correct, sir?

15 A. Yes, that was a stressor, but I was also afraid  
16 I was going to lose the job I had.

17 Q. Okay. Let's talk about that. You have  
18 testified for us today that you told them expressly  
19 not to call you back on your Simple Surrogacy number  
20 because you were not allowed to have those numbers,  
21 correct?

22 A. Yes.

23 Q. And you said that's what you were so concerned  
24 about, correct?

25 A. Yes.

1 MS. MALONE: Counsel, page 49, line 15.

2 Q. (By Ms. Malone) Do you recall, sir, in your  
3 deposition I asked you the concern about the office  
4 number, and at the time do you recall you told me:  
5 It's their 800 number, and I have an extension to  
6 call -- actually they contacted them -- they  
7 contacted the number for me, and it rolls over to my  
8 cell phone --

9 THE COURT: Slow, slow, slow. When you  
10 read you talk faster.

11 MS. MALONE: I speed up.

12 THE COURT: Everybody does. Go back a  
13 couple of sentences.

14 MS. MALONE: I will back it up, Judge.  
15 Thank you.

16 Q. (By Ms. Malone) Do you recall that you said:  
17 They contacted me at that number repeatedly, and it  
18 rolls over to my cell phone, but I can't answer the  
19 call, and I explained that.

20 That is the only definition or explanation you  
21 gave to me in your deposition, isn't that correct,  
22 sir?

23 A. I don't think that's the only explanation.

24 Q. That's the only one you gave to me when I took  
25 your deposition, isn't that correct, Dr. White?



1 A. I don't recall.

2 Q. Okay.

3 A. I could explain.

4 Q. I'm just saying that's what you said in your  
5 deposition, isn't that right, Dr. White?

6 A. Yes.

7 Q. All right. Now, Doctor, are there things that  
8 are sometimes good things in a person's life that  
9 can act as stressors, like completion of a degree  
10 plan?

11 A. Yes. I've completed four, though. I think  
12 I've mastered it.

13 Q. Sure. And you would agree with me that there  
14 are things like moving to a new city that can be  
15 maybe a good thing, but that can be a stressful  
16 thing to a person?

17 A. Yes.

18 Q. Entering into a relationship with an individual  
19 or raising a child while being a good thing can be a  
20 stressful thing?

21 A. We've been in a relationship for 24 years.

22 Q. I'm just saying in general, sir.

23 A. For many people it can.

24 Q. Okay. And in the situation following all of  
25 these calls -- I'm sorry, let me back up.

1           You have also had, during this period of time,  
2 going back from I think you told me 1998, a  
3 rheumatoid disease, correct?

4       A.     Yes.

5       Q.     In fairness, you are not suggesting my client  
6 caused you to have the rheumatoid illness; is that  
7 correct?

8       A.     Caused me to have the illness? No.

9       Q.     All right.

10      A.     That's correct.

11      Q.     And that is -- that particular -- I'm going to  
12 say it wrong, but I will try -- ankylosing  
13 spondylitis?

14      A.     That's right.

15      Q.     That particular illness is one that can cause  
16 you to have a hip replacement?

17      A.     I did have a hip replacement because of it.

18      Q.     It can cause you to have a fusion in your  
19 spine?

20      A.     My spine is fused.

21      Q.     When I checked out the website, one of the  
22 concerns is it can cause depression issues.

23               MR. RADBIL: Objection.

24               THE COURT: If you're going to object,  
25 please stand. Overruled.

1 A. No. I'm quite accustomed to having the pain  
2 that comes with ankylosing spondylitis. It's the  
3 flare-ups, especially when unexpected, that disrupt  
4 your life.

5 Q. I appreciate your answer, Dr. White. I'm just  
6 saying, isn't that a concern, when you have this  
7 long-term illness, that it can cause this overall  
8 sense of depression in a person? I'm not saying you  
9 said you had it, I'm just saying that's a concern.

10 A. It can be with any disease that's chronic.

11 Q. Sure. And in fact, one of the things that you  
12 look for as a psychologist is another stressor  
13 called legal complications, correct?

14 A. Legal complications?

15 Q. Sure, being involved in a lawsuit or testifying  
16 in a lawsuit for something that's important to you,  
17 those are issues of stress, correct?

18 A. Yes.

19 Q. And in fact, Doctor, are you aware in the DSM  
20 that there is a discussion --

21 MR. RADBIL: Your Honor --

22 THE COURT: Sustained. I'm not going to  
23 get into the DSM at this point.

24 Q. (By Ms. Malone) Dr. White, would you agree  
25 with me that there is a concern that someone who is

1 going through the legal system may have a tendency  
2 to have exaggerated symptoms?

3 MR. RADBIL: Objection, calls for  
4 speculation.

5 THE COURT: Overruled.

6 A. No, I don't agree.

7 Q. (By Ms. Malone) Would you agree with me,  
8 Doctor, that there are diagnoses -- or there are  
9 symptoms that are concerned with in your field that  
10 look to see whether or not someone will exaggerate  
11 or overstate symptoms in an effort to receive some  
12 sort of personal benefit, either of personal variety  
13 or a monetary variety?

14 A. Are you asking me to name a disorder?

15 Q. I'm just asking you if that is true.

16 A. That is true.

17 Q. And one of the things that you would look for  
18 is whether or not someone exaggerates their symptoms  
19 in response to a particular stimuli, correct?

20 A. That can be correct.

21 Q. Okay.

22 A. That's a lot of speculation about the general  
23 population.

24 Q. In fact, sir, you have indicated to me in your  
25 deposition that the reason you felt hopeless and

1 helpless -- on page 83, line 8, Counsel -- was  
2 because you couldn't pay back the money and you  
3 didn't have a way to satisfy Texas Guaranteed, isn't  
4 that correct, sir?

5 A. On their terms, no, I couldn't.

6 Q. And that's why you felt helpless and hopeless  
7 in this situation.

8 A. I was unable to speak with them, so, yes, that  
9 made me feel hopeless and helpless.

10 Q. Isn't it true, sir, that you never sent  
11 anything in writing to either RAB or Texas  
12 Guaranteed specifically complaining about these  
13 phone calls that you had?

14 A. No. I didn't know that I needed to with RAB.  
15 I did complain to Texas Guaranteed.

16 Q. In writing, sir?

17 A. About -- but not about Regional Adjustment  
18 Bureau. They had given me misinformation. I didn't  
19 know my loan was in default. I checked in online,  
20 just like I do about twice a year, and I saw nothing  
21 about default. I didn't even know my loans were in  
22 default. And I was receiving my mail at the address  
23 I had given them. I kept my information updated and  
24 never knew the loan was in default until much, much  
25 later.

1 Q. So we're clear, if you complained to Texas  
2 Guaranteed, it was not about Regional Adjustment  
3 Bureau, is that correct, Dr. White?

4 A. That's correct.

5 Q. Okay. And it's also true that you did not seek  
6 out any special medications or treatments, at the  
7 time of your deposition you had not seen a counselor  
8 or asked to see a psychologist?

9 A. A psychologist, no; I saw my family doctor.

10 Q. Okay. You did not discuss that -- you did not  
11 discuss with your family doctor either the telephone  
12 calls or the student loan problems, isn't that  
13 correct, Doctor?

14 A. That's correct.

15 Q. Dr. White, according to the account notes that  
16 were read earlier, there was an indication or a  
17 request that you would call them back in March of  
18 2011. Do you recall that reading of the account  
19 notes?

20 A. I'm sorry, call Regional Adjustment Bureau  
21 back?

22 Q. Yes, sir.

23 A. I thought it was February 2011, but . . .

24 Q. Later in March there was -- Dr. Wyatt -- I knew  
25 I was going to do that. I apologize, sir.

1 Mr. Wyatt read a note in March where someone  
2 had left a message with your spouse, and he said he  
3 would have you call back.

4 Do you recall his reading that account note?

5 A. And he said that I would call back, yes, I do  
6 recall that; yes.

7 Q. Okay. And you didn't call back, did you, sir?

8 A. No.

9 Q. In fact, you called, instead, according to your  
10 cell phone records that your counsel offered us, you  
11 called the law firm, correct?

12 A. Much later.

13 Q. According to the account notes, you called the  
14 law firm on March the 17th, March the 21st, and I  
15 can't read this one, but it looks to be March the  
16 22nd; is that correct?

17 A. Seeking advice, yes; not a lawsuit.

18 Q. And you, in fact, spent, according to your cell  
19 phone records, some 25 minutes discussing that with  
20 the law firm; is that correct?

21 A. Yes.

22 Q. But you didn't send in the 100 bucks to work  
23 out a payment plan with RAB, correct?

24 A. They refused to work out a payment plan, so the  
25 \$100 would have been irrelevant.

1 MS. MALONE: Pass the witness, Your Honor.

2 THE COURT: Redirect.

3 MR. RADBIL: In your deposition --

4 THE COURT: Mr. Radbil?

5 MR. RADBIL: Pardon me.

6 THE COURT: Give line and page, please.

7 **REDIRECT EXAMINATION**

8 Q. (By Mr. Radbil) Yes, this is Dr. White's  
9 deposition, page 87, line -- I'm sorry, page 88, the  
10 whole part of 88 through --

11 THE COURT: Starting at the top of the  
12 page?

13 MR. RADBIL: Yes.

14 THE COURT: Okay.

15 Q. (By Mr. Radbil) Question was: "Dr. White, did  
16 you do any sort of counseling with Dr. Cush?"

17 Who was Dr. Cush?

18 A. He's a rheumatologist who I saw twice for  
19 ankylosing spondylitis.

20 Q. I think Ms. Malone asked you: "Did you see a  
21 counselor?"

22 You responded: "No."

23 And then her next question, if you recall, was:  
24 "A lot of churches have what they call pastoral  
25 counseling. I know you are familiar that those



1 folks have some training in counseling background.

2 Do you do pastoral counseling?"

3 Do you remember what your response was?

4 A. No, I do not.

5 Q. You don't know what your response was?

6 A. I don't do that and -- but I don't remember the  
7 response, either.

8 Q. The response was, no, you didn't.

9 A. Oh.

10 Q. Then Ms. Malone asked: "Okay. Not all folks  
11 do. Okay. At your school at Texas A&M  
12 University-Commerce, a lot of psychology programs  
13 have student counseling for helping graduate  
14 students go through what appears basically a very  
15 stressful time in their life. Do you partake --"

16 THE COURT: Okay. Where is this going?  
17 What is the point? Is this to come back on some  
18 point that she made? Can you tell me the topic of  
19 the point?

20 MR. RADBIL: Yeah, that he hadn't sought  
21 out any treatment, but the deposition testimony  
22 contains testimony about antianxiety medication.

23 THE COURT: Okay. Ms. Malone?

24 MS. MALONE: Your Honor, none of that has  
25 anything to do with antianxiety medication.

1 THE COURT: Okay. My recollection is  
2 there was an objection and she was going into this  
3 counseling area. Why don't we move on to the next  
4 topic, and we will see where we are at the end of  
5 the day, which will be in ten minutes.

6 MR. RADBIL: Really, I don't think I have  
7 too many more topics. The issue in the case --

8 THE COURT: I don't need argument, I need  
9 questions. This isn't time for argument in front of  
10 the jury. So do you have a question?

11 MR. RADBIL: Yes.

12 Q. (By Mr. Radbil) Did the fact that Regional  
13 Adjustment Bureau continued to call your Simple  
14 Surrogacy employment telephone numbers after you  
15 told them not to cause you to suffer actual damages?

16 A. Yes, it caused a domino effect in my life that  
17 caused me to develop mental health symptoms I had  
18 never experienced before. And it literally cost me  
19 by adding exponentially to my debt and with some  
20 out-of-pocket costs.

21 Q. And it's true that you are making the  
22 300-dollar payments to Texas Guaranteed directly at  
23 that time?

24 A. Yes. I understood that RAB was not going to be  
25 reasonable, although I tried to be, and so I simply

1 started paying Texas Guaranteed.

2 Q. What you could.

3 A. Yes.

4 Q. And had you lost your job at Simple Surrogacy,  
5 how much could you have paid then?

6 A. Absolutely nothing.

7 Q. And if you paid nothing, what were the odds of  
8 you ever being able to practice?

9 MS. MALONE: Asked and answered.

10 THE COURT: Sustained. Sustained.

11 Q. (By Mr. Radbil) Has your testimony today been  
12 truthful?

13 A. Yes, absolutely.

14 Q. Are you making this up, that you suffered  
15 actual --

16 THE COURT: You've asked that, and it's a  
17 bolstering-type question, which really isn't  
18 permissible. What else do you have, Mr. Radbil?

19 MR. RADBIL: That's it.

20 THE COURT: Redirect -- recross?

21 MS. MALONE: No, Your Honor.

22 THE COURT: Dr. White, you may step down.

23 Ladies and gentlemen, we're going to break  
24 for the day. I will tell you that we've made  
25 significant progress. We got the jury selected, we

1 had the opening statements, and we have had two  
2 witnesses on. That's pretty darn good for the first  
3 day of jury trial, especially when you came here  
4 today without knowing where you would end up. So  
5 the progress report is that we are doing well.

6 Please do give yourself plenty of time to  
7 be ready to start at 9:00 tomorrow. As I said, I  
8 don't think this case will last a long time. I  
9 think it will be short again this week. And please  
10 remember not to talk about the case. See you  
11 tomorrow. Thank you.

12 (Jury leaves courtroom)

13 THE COURT: First question is on this  
14 counseling issue. Ms. Malone objected that the  
15 answer to the interrogatory was there was no  
16 counseling, and it hadn't been supplemented. So how  
17 did we get into counseling, Mr. Radbil? I didn't  
18 see that that was opened up. How did we get into  
19 that area which I specifically said not to go in to.

20 MR. RADBIL: I apologize, Your Honor. I  
21 may have misunderstood, but I thought she stated in  
22 his deposition that there was no reference at that  
23 time of him seeking any treatment.

24 THE COURT: Ms. Malone, maybe you can  
25 clarify this, because it seems like a blatant

1 violation of the sidebar discussion we had.

2 MS. MALONE: I think it is, Your Honor.  
3 In the interrogatory answer, the answer was, "None."  
4 All I said to him was, at the time of your  
5 deposition you had sought no counseling, which is  
6 not inconsistent with the interrogatory answer.  
7 Anything that's different in his interrogatory  
8 answer I think regarding -- which Mr. Radbil's  
9 question was specifically about current counseling,  
10 that his client is undergoing would be a violation.

11 THE COURT: Normally what would happen,  
12 Mr. Radbil, is, if you thought it was opened up --  
13 and I am not convinced that it was, especially under  
14 the circumstances that we had sidebar -- that you  
15 would at least approach the bench.

16 So I've been concerned about your conduct  
17 in this case for a long time. And once again,  
18 you've done something that causes me more concern.  
19 I'm still trying to figure out where in the pretrial  
20 order you are gleaning this idea that somehow they  
21 have agreed and it's uncontested that this telephone  
22 automatic recording device was not contested.

23 Again, a point of some concern to the  
24 Court, given that it's a major issue in the case.  
25 And I don't see where it's been stipulated to in any

1 form or fashion. In fact, it's probably one of the  
2 primary issues in the case.

3 Having said that, where are we in your  
4 case?

5 MR. RADBIL: We are almost finished.

6 THE COURT: What does that mean?

7 MR. RADBIL: It means I have a few  
8 questions to ask the corporate representative.

9 THE COURT: For what purpose?

10 MR. RADBIL: For the purpose of  
11 demonstrating the financial incentive and motivation  
12 to keep inaccurate records. Can we exclude -- I  
13 guess we can't. Can we exclude the witness?

14 THE COURT: He's a party. You've sued  
15 him. He's actually one of the owners of the  
16 company, so we are not going to exclude him.

17 MR. RADBIL: So the letter that was sent  
18 to -- let me think for a second.

19 The letter shows that a big part of their  
20 business is using the automatic telephone dialing  
21 system. It shows that they were extremely concerned  
22 about a law that would affect their ability to do  
23 so. They also have documents that I haven't gone  
24 over yet in the training manuals that talk about the  
25 difference between the older type of collection and

1 modern technology.

2 THE COURT: You have had all day to ask  
3 Mr. Wyatt these questions, and you haven't. And now  
4 all of a sudden you're calling him a corporate  
5 representative. I'm not sure what you are talking  
6 about. You've had all day to ask him these  
7 questions. And once again, and I apologize, but I  
8 am losing my patience with you, I really am. You  
9 are coming up with a nonsensical position in this  
10 case, this idea that you can call him again as a  
11 corporate representative when you have had most of  
12 the day to question him.

13 Ms. Malone?

14 MS. MALONE: Your Honor, Mr. Wyatt already  
15 testified that he wasn't familiar with that letter,  
16 so I don't think it can go in. He already asked  
17 Mr. Wyatt, is my recollection, he asked him about  
18 the training. He also asked him about whether or  
19 not the account could be called back to Texas  
20 Guaranteed. He asked him about whether or not the  
21 collectors got a commission or a bonus based on  
22 that.

23 All of that has already been gone into.  
24 And frankly -- you know, Mr. Wyatt, while I guess he  
25 didn't say he was a corporate rep, I certainly had

1 him testify as to corporate policies and a corporate  
2 representative. I would assume he would only take  
3 the stand one time, because that's normally what  
4 happens with an individual who is the corporate  
5 representative and one of the owners of the company.

6 So frankly, I think that it would be  
7 mostly asked and answered and bolstering for no good  
8 reason, Your Honor.

9 THE COURT: Mr. Radbil.

10 MR. RADBIL: The record will show that  
11 there was objections lodged by Robbie Malone to the  
12 fact that he was testifying in an individual  
13 capacity. And you also asked me, Your Honor, to  
14 line it up because I could re-call him to get into  
15 topics --

16 THE COURT: But you asked him the same  
17 questions over and over again, three or four times  
18 the same topic asked three or four different ways.  
19 And I'm concerned, first of all, that again it makes  
20 no sense that you are all of a sudden deciding he is  
21 a corporate rep and you're calling him back. But I  
22 haven't heard from you what specifics that you would  
23 have that would somehow not be repetitive and  
24 somehow probative to your case. So that's what I  
25 would like to know. What you have told me so far



1 you have already asked.

2 MR. RADBIL: Okay. So the letter to the  
3 FCC, the corporate representative must have  
4 knowledge of because it was sent in an official  
5 capacity of that corporation.

6 THE COURT: Well, did you depose him? Did  
7 you depose someone in the corporate capacity,  
8 30(b)(6)?

9 MR. RADBIL: I did.

10 THE COURT: And what was the answer to  
11 that question at that time?

12 MS. MALONE: It was not a topic, Your  
13 Honor, it was not requested.

14 THE COURT: Too little, too late.

15 MR. RADBIL: I'm not sure that's correct.

16 THE COURT: Mr. Radbil, you can't come --  
17 again, what you have been doing is coming up  
18 unprepared. I've got no exhibits from you, no  
19 marked exhibits. You're coming up here, and you're  
20 telling me that the other side is falling short on  
21 something that perhaps would have come up in  
22 discovery, but there has been no motion to compel.  
23 None of this was ever brought before this Court or  
24 the magistrate judge. So the question I would have  
25 is this idea of the corporate rep being or not being

1 familiar with this letter is something that you  
2 should have fleshed out a long time ago in  
3 discovery.

4 MR. RADBIL: I have a motion to compel. I  
5 actually brought it with me.

6 THE COURT: Well, I want to know, first of  
7 all, was it the topic of a deposition, 30(b)(6)  
8 deposition notice?

9 Are you telling me that you think it was?

10 MR. RADBIL: Yes, I'm telling you that I  
11 think we argued about it in the deposition. And the  
12 second deposition was ordered because he was  
13 unprepared on certain topics.

14 THE COURT: Okay. But the point is, did  
15 you ask about this letter of the corporate  
16 representative during a deposition?

17 MR. RADBIL: I believe the answer is yes.

18 THE COURT: Who was it that you  
19 questioned?

20 MR. RADBIL: Mr. Wyatt.

21 THE COURT: And he's now telling you from  
22 the witness stand that he doesn't have any personal  
23 knowledge of this letter.

24 MR. RADBIL: Right.

25 THE COURT: How does that change as

1 corporate representative?

2 MR. RADBIL: Because the --

3 THE COURT: The point is, Mr. Radbil, that  
4 everything that you are raising -- having presided  
5 over probably thousands of discovery disputes, I can  
6 tell you the subject and topic of a good attorney's  
7 motions during discovery process. That's what  
8 should have happened if you thought there was an  
9 insufficient answer on this particular letter from  
10 the corporate rep.

11 There is nothing to indicate that's ever  
12 been ordered or you didn't get the answer that you  
13 were asking for during discovery. So as far as I'm  
14 concerned, that ends the issue. Can you show me  
15 something to the contrary?

16 MR. RADBIL: Yes, I can show you the  
17 motion to compel, Your Honor.

18 THE COURT: Where was the notice of a  
19 corporate dep 30(b)(6) notice?

20 MR. RADBIL: I believe it should be an  
21 attachment to the motion to compel, which I am going  
22 to find immediately.

23 MS. MALONE: Your Honor, if I could, I  
24 could show Mr. Wyatt's deposition. There is -- in  
25 the index, there is no reference to FCC at all. So

1 if the letter had been requested as questioned about  
2 in the deposition, there is to FACS, but there is no  
3 FCC. FACS is the operating system.

4 MR. RADBIL: I don't want to point  
5 fingers, but the conduct at the deposition was one  
6 of the reasons that we moved to compel.

7 THE COURT: All right. Then put your  
8 money where your mouth is. Show me what you're  
9 talking about, because right now you are making a  
10 lot of empty accusations, as you have so far in this  
11 case.

12 Stay where you are and show this to  
13 Ms. Malone and point to her exactly what you are  
14 talking about. What is the document?

15 MS. MALONE: It's a motion to compel,  
16 Judge, that I don't know if it's even been filed.  
17 It doesn't have a Doc number on the top.

18 MR. RADBIL: We had a hearing on this.

19 MS. MALONE: If I may look at it. This is  
20 the -- we didn't have a hearing on this. We did not  
21 have a hearing on this, Your Honor.

22 Judge Kaplan -- when Mr. Radbil filed  
23 this, Judge Kaplan issued an order saying, no more  
24 motions to be filed. We had an informal conference  
25 in his area, and he -- I said I found one document

1 that had not been produced, and he asked me to  
2 produce my client by telephone for one hour to cover  
3 that topic, which I did, and it was not that letter.

4 THE COURT: What was the topic?

5 MS. MALONE: It was the Texas Guaranteed  
6 additional pages for their training manual, which is  
7 what we were talking about earlier.

8 MR. RADBIL: Your Honor, it is not that  
9 simple. I am putting my money where my mouth is.  
10 In that motion to compel, it lays out the grounds of  
11 the discovery conduct.

12 THE COURT: When was the hearing?

13 MR. RADBIL: It was -- I don't recall the  
14 date.

15 THE COURT: What was the order that came  
16 out of the hearing?

17 MR. RADBIL: That a new deposition would  
18 take place and that the contractual documents that  
19 were withheld had to be produced.

20 THE COURT: And where is it that this  
21 specific document is that you are referring to?

22 MR. RADBIL: I don't think that I got that  
23 document.

24 THE COURT: Where is it that you got it as  
25 a topic in this motion and that you had it ordered

1 by Judge Kaplan?

2 MR. RADBIL: Judge Kaplan didn't order  
3 that. He -- unfortunately, he didn't grant many of  
4 the things that I asked for.

5 THE COURT: So you never got this motion  
6 granted.

7 MR. RADBIL: Yes, it was granted. We had  
8 a second deposition.

9 THE COURT: All right. And where is it,  
10 Ms. Malone, if you can tell me from your review of  
11 it that it mentioned anything about this letter that  
12 we are talking about?

13 MS. MALONE: It doesn't, Your Honor.

14 THE COURT: Mr. Radbil, I am beginning to  
15 become very concerned about your conduct. I  
16 honestly don't know if you know what you are doing.  
17 I have never said that to an attorney before. I  
18 don't know if you know what you are doing, honestly.  
19 I'm not sure how you have gotten this far in this  
20 case. I understand finally why it hasn't come to  
21 some kind of a resolution.

22 But there is, from what I can hear,  
23 nothing to support this accusation that you are  
24 making with regard to this letter in the record, in  
25 the motions, or in the deposition questions. And so

1 as far as that goes, there's not going to be any  
2 further questions on it tomorrow.

3 Is there anything else that you need to  
4 question him about?

5 MR. RADBIL: No. No, there is not, Your  
6 Honor.

7 THE COURT: Anything else?

8 MS. MALONE: Your Honor, I would be  
9 prepared to make a motion, if he's resting, outside  
10 of hearing, and if you want to --

11 THE COURT: I want to give Mr. Radbil a  
12 chance to talk to his client. But if there is no  
13 further testimony and the only thing, at least  
14 projective was what you have mentioned so far, which  
15 I am not permitting for the reasons I have stated,  
16 then we would be looking at some jury instructions  
17 ready for tomorrow.

18 Mr. Radbil, are you ready to rest, or do  
19 you need to Dr. White?

20 MR. RADBIL: I need to talk to Dr. White.

21 THE COURT: All right. I would like to  
22 take about a 15-minute break. And then I would like  
23 to hear what the plan is for tomorrow so we can plan  
24 accordingly. So let's take a 15-minute break.

25 (Recess taken.)

1 THE COURT: We talked about if you can't  
2 decide in the short period we have about this  
3 tonight, Mr. Radbil, that's fine, but I want to see  
4 where you are after talking to your client.

5 MR. RADBIL: I would like to show Your  
6 Honor the materials specifically that I would intend  
7 to re-call Mr. Wyatt to discuss and explain how I  
8 think they are relevant and why I think they would  
9 be of meaningful use.

10 THE COURT: Okay. Have you shown them to  
11 Ms. Malone?

12 MR. RADBIL: Well, one is an exhibit,  
13 Plaintiff's Exhibit 11.

14 THE COURT: Is this the letter we have  
15 been referring to?

16 MR. RADBIL: Yes, Your Honor.

17 THE COURT: Let's talk about that for a  
18 minute. He has indicated, as an individual, which  
19 it couldn't change as corporate representative, that  
20 he has no personal knowledge about this. Whether he  
21 was supposed to or not is something that, as I  
22 mentioned, should have been brought up and raised in  
23 a motion to compel.

24 You filed a motion to compel under seal  
25 and maybe ex parte, I'm not sure, on July 22nd of



1 last year, Document 32-1. Judge Kaplan denied your  
2 request to file this, as you had filed it under  
3 seal, and it was never refiled and never ruled upon.

4 Even if it had been, nowhere in this  
5 particular document, 32 or 32.1, is anything  
6 addressed with regard to this letter. So as it is  
7 right now, this letter is not something I'm going to  
8 let you re-call him, as a corporate rep or not,  
9 because we already know his answer. To the extent  
10 you think it's inappropriate, you should have  
11 brought that up by now. So that's my position on  
12 that. So that's that.

13 Why don't you generally give me some ideas  
14 about where these other points are, and I will see  
15 where we are.

16 MR. RADBIL: The testimony that's outlined  
17 in our motion to compel would be used to impeach  
18 Mr. Wyatt's testimony. For instance, Question:  
19 What are the compromise procedures?

20 I don't know what they are.

21 Are you familiar with the TG contractual  
22 procedural manual?

23 I am not aware of a procedural manual.

24 I don't know if we have this manual. I'm  
25 not the trainer. I'm not sure what those documents

1 would look like. I'm not sure if there is a  
2 separate set of documents. I'm not sure. I'm not  
3 familiar with that manual.

4 THE COURT: Mr. Radbil, but how does this  
5 further the ball in any way that's probative to what  
6 you have to prove?

7 MR. RADBIL: That's my next point, which  
8 is, if there is no bona fide error defense, which I  
9 think there has been no evidence presented of any  
10 error, then I don't think this needs to be  
11 presented. And since Your Honor has made the  
12 decision regarding the letter, then I don't think  
13 there is much left.

14 THE COURT: I want to make sure you have  
15 made your record here. If there is no bona fide  
16 error defense. This is the first time I have heard  
17 this, then what?

18 MR. RADBIL: The only reason that policies  
19 and procedures are relevant to an FDCPA claim is if  
20 you assert the one statutory defense against the  
21 strict liability statute it imposes. The elements  
22 of the defense are, you have policies and procedures  
23 in place designed to protect against the specific  
24 type of error that occurred which caused the  
25 violation.

1 THE COURT: Before you go any further, is  
2 that somehow raised in the pretrial order?

3 MR. RADBIL: I think that it is.

4 THE COURT: Ms. Malone, it's your defense.

5 MS. MALONE: Yes, ma'am. The remaining  
6 FDCPA claim was to do with whether or not they had  
7 properly documented or ceased communication to the  
8 employer -- or to the number of the employer, that  
9 he had been told not to call that number or call in  
10 any way.

11 Our position is that was never said. But  
12 if there had been mistake in the entry, certainly  
13 Mr. Wyatt testified and gave a specific policy that  
14 says that they are supposed to cease cause to a  
15 specific number, including an employer number if  
16 requested.

17 And so we do have that policy in place. I  
18 certainly think that is sufficient. That has  
19 nothing do with the Texas Guaranteed contract,  
20 though. That's two different -- we already had that  
21 testimony. He questioned him on that training  
22 manual.

23 THE COURT: Mr. Radbil.

24 MR. RADBIL: Simply I would respond that  
25 in this Court's order on summary judgment the Court

1 laid out the requirements of the bona fide error  
2 defense. And the reason the bona fide error defense  
3 was denied was because they didn't cite to any  
4 specific error that occurred.

5 THE COURT: The point now, though, is,  
6 where does it fit in your case with regard to  
7 Mr. Wyatt as now you've said you want him as a  
8 corporate representative and how is it relevant?

9 MR. RADBIL: If the bona fide error  
10 defense is in play, then they would have the  
11 obligation and the burden to show that these  
12 policies and procedures were sufficient to protect  
13 against the type of violation that occurred here.  
14 And to the extent he can be impeached about the  
15 understanding or his testimony about the policies  
16 and procedures, I think that's relevant.

17 THE COURT: And how is it that you -- I'm  
18 still not clear on this. It seems that you asked  
19 him about this during his previous direct testimony,  
20 but I'm still not clear on how that is probative on  
21 anything that you have to prove, besides this  
22 bona fide defense, what you have to prove.

23 MR. RADBIL: That's -- I'm not saying it  
24 is.

25 THE COURT: What is your best case

1 scenario of the kind of responses that you will get  
2 that will aid you in, I guess, refuting this  
3 defense?

4 MR. RADBIL: That the policies and  
5 procedures aren't real; that he had no knowledge of  
6 them; that they were presented only for the purpose  
7 of this case and not actually implemented. Because  
8 several months ago he didn't even know they existed,  
9 and he has testified that he's the guy who is  
10 responsible.

11 THE COURT: Ms. Malone?

12 MS. MALONE: Your Honor, the secondary  
13 policies and procedures he's talking about were the  
14 subject of the second deposition. After we learned  
15 that they had not been turned over to us initially,  
16 I actually told Judge Kaplan, this is the only thing  
17 I haven't given to them. He didn't know about it.  
18 Kaplan said I had to re-present a corporate  
19 representative on that topic. In the interim,  
20 Mr. Wyatt educated himself as a corporate  
21 representative can. And in the second deposition,  
22 Mr. Radbil spent 45 minutes asking him about the  
23 very document from the corporate representative.

24 So it is really misleading to say that  
25 that didn't come up, because it was covered in a

1 separate topic. It was not clearly listed in the  
2 30(b)(6) in the first time. I didn't agree with him  
3 about it. But Judge Kaplan's solution was, you give  
4 them this document -- did you let him question him  
5 about it? And I said, no, Judge, I didn't. And he  
6 said, produce him by phone for an hour, and I did.

7 THE COURT: And your specific precise  
8 refutation or rebuttal to Mr. Radbil's position to  
9 where it fits in this case, just so I'm clear.

10 MS. MALONE: Nothing. It means nothing to  
11 this case. In my bona fide error policy defense,  
12 all I have to produce is what our policies are. If  
13 we have additional obligations under the Texas  
14 Guaranteed loans on top of that, that's just gravy,  
15 Judge. I have done what I wanted to do. It has  
16 nothing to do with his case.

17 THE COURT: Okay.

18 MR. RADBIL: It's very easy to take care  
19 of, because there hasn't been any testimony  
20 presented about any specific error, and that is  
21 required to establish the bona fide error defense.

22 THE COURT: Let's hear your questions.

23 MR. RADBIL: My questions?

24 THE COURT: Uh-huh. What do you want to  
25 ask him? Because we have talked in generalities,

1 and I am still not convinced it's relevant.

2 MR. RADBIL: I don't want to ask him --

3 THE COURT: I just want to hear your  
4 questions. Give me some sample questions you will  
5 be asking him.

6 MR. RADBIL: Well, a review of what he has  
7 testified about today.

8 THE COURT: Go ahead, as though he is up  
9 there.

10 MR. RADBIL: Okay. What was the date of  
11 his first deposition. I would ask something along  
12 the lines of: You testified that you shared  
13 responsibility over the course of your tenure at the  
14 company for implementing the policies and procedures  
15 designed to protect against violations of the Fair  
16 Debt Collections Act. Yet, at your deposition only  
17 a few months ago, or however many months ago, I  
18 asked you to identify the training manuals, the  
19 training materials and documents that are used  
20 specifically for a student loan, not retail, student  
21 loan or educational collection divisions.

22 The response was: I'm not sure there is a  
23 separate set of documents. I'm not sure.

24 Are you familiar with TG's Contractor  
25 Procedural Manual which governs the policies?

1 I am not familiar with that manual. I  
2 have no idea what version it would be. Honestly, I  
3 wouldn't. I am not familiar with it, sir, I am not.  
4 I'm sure. I'm not sure, sir. I don't know if there  
5 are --

6 THE COURT: Slow down. Keep going. These  
7 are questions that you plan to ask him.

8 MR. RADBIL: Is there any instructional  
9 documentation that the defendant has regarding how  
10 to use the tactics?

11 I'm not sure.

12 Is there any user manuals or technical  
13 documents related to the FACS system that the  
14 defendant has?

15 Not that I'm aware of.

16 It says the Contractor Procedural Manual  
17 contains client specifics for Texas Guaranteed.

18 Answer: I'm not sure if I have seen that  
19 Contractor Procedural Manual.

20 And you can't answer whether or not the  
21 Contractor Procedural Manual contained any  
22 authority; is that correct?

23 That's correct.

24 THE COURT: Okay. That's enough. I think  
25 I have an idea.



1 Ms. Malone, now that you have heard some  
2 more specifics.

3 MS. MALONE: Sure. Two things: First of  
4 all, that's completely out of context.

5 Mr. Wyatt testified that there wasn't --  
6 he asked him if there was a manual for the FACS  
7 Operating Section, and Mr. Wyatt testified, no, the  
8 Ontario guys came in and trained us on the equipment  
9 directly. We don't have an actual manual. So  
10 that's out of context.

11 Everything else about the Texas Guaranteed  
12 loans situation, their account records, were in the  
13 second deposition, Judge. And for him to read the  
14 first one, where he says he didn't know about him  
15 and as corporate representative becomes educated on  
16 it and testifies about it in the second deposition  
17 would be extremely misleading.

18 THE COURT: So what you were quoting from  
19 was the first deposition and not the second?

20 MR. RADBIL: Yes.

21 THE COURT: Did you get answers in the  
22 second deposition?

23 MR. RADBIL: No, not sufficient answers,  
24 Your Honor. It is limited to --

25 THE COURT: Mr. Radbil, give me a break.

1 You just quoted from the deposition that you had  
2 essentially then brought to Judge Kaplan's  
3 attention, and he ordered another deposition, and  
4 you are trying to rely on the inadequacy of the  
5 first deposition when you got a second one?

6 MR. RADBIL: The point of relying on the  
7 first --

8 THE COURT: Is the answer to that yes or  
9 no?

10 MR. RADBIL: Yes, but there is a reason.

11 THE COURT: Okay. All right. I've heard  
12 enough.

13 Mr. Radbil, I am concerned about your  
14 conduct in this case. I know you are a young  
15 attorney and young attorneys make mistakes. But  
16 what I have seen here is disingenuous behavior and  
17 behavior that seems to skirt the truth in more than  
18 one respect.

19 Again, you mentioned that this whole issue  
20 with regard to the automatic dialing device was  
21 resolved in the pretrial order, did you not?

22 MR. RADBIL: Yes, and I still think that  
23 it is.

24 THE COURT: Show me exactly where that is  
25 that's been agreed to by the other side in the

1 pretrial order.

2 MR. RADBIL: Page 5, Defendant Regional  
3 Adjustment Bureau Incorporated. Defendant's  
4 contentions. The TCPA. In order to prevail under  
5 the TCPA, plaintiff must establish that defendant  
6 used an automated telephone dialing system or  
7 artificial prerecorded voice message to make a call  
8 to plaintiff's cell phone without their consent.  
9 Defendant contends that the vast majority of its  
10 calls were made manually. In fact, only three calls  
11 were made engaging the ATDS. That is an admission  
12 that an automatic telephone dialing system was used.

13 THE COURT: Ms. Malone.

14 MS. MALONE: No, ma'am, that is not. That  
15 is not -- maybe somebody made a shorthand. I'm not  
16 sure how that got in there, because we do refer to  
17 the dialers as ATDS's, but we never said it complies  
18 with the TCPA. In fact, we have vehemently fought  
19 that throughout this case, Judge. You know that.

20 THE COURT: Once again, Mr. Radbil, you're  
21 making no sense. These are tactics that I don't see  
22 in federal court. It doesn't make any sense. It  
23 has no truth to it. You're arguing things that  
24 basically have no element of truth to them. If the  
25 defense had -- are you saying they unwittingly

1 admitted to it? Is that what it is, you caught them  
2 and they unwittingly admitted to it?

3 MR. RADBIL: No. I think they used that  
4 automatic telephone dialing system and we are honest  
5 here.

6 THE COURT: Well, I disagree with you. So  
7 far I haven't heard anything that indicates any  
8 possible additional relevant testimony with regard  
9 to Mr. Wyatt. If you have anything else, I will be  
10 glad to hear about it; otherwise, I would like to  
11 know what other witnesses you have.

12 MR. RADBIL: I don't have any other  
13 witnesses.

14 THE COURT: All right. Is there any other  
15 reasons, other than what you have stated, that you  
16 would have to submit for re-calling Mr. Wyatt?

17 MR. RADBIL: Yes. To the extent that  
18 there is going to be any discussion about a  
19 bona fide error, I think it needs to be clarified  
20 whether those retail policies and procedures that  
21 his deposition testimony --

22 THE COURT: Okay. There's been no  
23 discussion about it so far.

24 MR. RADBIL: Okay.

25 THE COURT: And right now, if you rest,

1 unless there's a defense, there's no discussion  
2 about it. So if there's a defense, then perhaps a  
3 lot of what you are talking about would be opened  
4 up. But right now we are talking about in  
5 plaintiff's case in chief.

6 MR. RADBIL: Is there a defense?

7 THE COURT: Well, I don't think they have  
8 to tell you that. There's no defense right now as  
9 far as actual evidence, their own case, so. . .

10 MR. RADBIL: Okay. Then, yes, we rest.

11 THE COURT: Well. I -- what I want is, I  
12 want the lawyers here by 8:00 and I want proposed  
13 jury instructions hopefully agreed to.

14 Ms. Malone.

15 MS. MALONE: Your Honor, if they are  
16 formally resting, I have two motions for the Court's  
17 consideration that need to be done outside the  
18 hearing of the jury. And one of them obviously is a  
19 directed verdict, and one of them is a little more  
20 serious.

21 THE COURT: Okay. Let's go ahead.

22 Are you resting?

23 MR. RADBIL: Yes.

24 MS. MALONE: Your Honor, related to the  
25 directed verdict, I would ask the Court to grant a

1 directed verdict on the Telephone Consumer  
2 Protection Acts claims.

3 In order for the plaintiff to prevail,  
4 they have to show that there was an automated  
5 telephone dialer that, according to the statute,  
6 stores and randomly generates telephone calls to  
7 someone.

8 The only evidence that has been put on in  
9 this case is from Mr. Wyatt, who specifically said  
10 their telephone dialing system does not store nor  
11 randomly generate telephone calls.

12 Additionally, they have to show that that  
13 dialing system was used to call Mr. White's cell  
14 phone. There was no evidence, no question even  
15 really asked about whether or not there were any  
16 calls made to a cell phone that were not manually  
17 made.

18 The only evidence before the Court is that  
19 these telephone calls were manually made. And so  
20 for that reason, I think the automated telephone  
21 dialing system question kills the TCPA claims, and  
22 it's done and there is nothing else to be done on  
23 that issue.

24 THE COURT: Let me hear from Mr. Radbil on  
25 that point, please.

1 MR. RADBIL: As numerous courts have held,  
2 a predictive dialer satisfies the definition of an  
3 automatic telephone dialing system. That's by order  
4 of the Federal Communications Commission. I don't  
5 have the cite on me.

6 Their website states and admits that they  
7 use a predictive dialer. We also have testimony  
8 from Mr. Wyatt about how manual calls are really  
9 made, which is the button is pushed and it dials a  
10 bunch of numbers. That satisfies the definition.  
11 There is plenty of evidence in the record as is.

12 In fact, I -- I think those two things  
13 combined alone and those are the only two pieces  
14 that stick out in my mind.

15 THE COURT: Go ahead and add anything else  
16 you would like to add.

17 MR. RADBIL: I am not prepared to argue  
18 the motion for directed verdict without looking at  
19 the testimony.

20 THE COURT: Mr. Radbil, this is a trial.  
21 The case has gone as it has gone, and it's time to  
22 give me your response to their motion for directed  
23 verdict if you have rested, and you have.

24 MR. RADBIL: A predictive dialer satisfies  
25 the definition pursuant to FCC order. Their website

1 contains an expressive mission that they used a  
2 predictive dialer. He testified why they use it,  
3 because they can make many more calls much more  
4 efficiently than people punching numbers. Okay?

5 And he also testified that when a manual  
6 call is dialed, what's really happening is a person  
7 is pushing the button to start the automatic  
8 telephone dialing system, and whichever connects  
9 first comes back. That's an automatic telephone  
10 dialing system.

11 THE COURT: Anything else?

12 MR. RADBIL: No, Your Honor.

13 THE COURT: Let me hear back from  
14 Ms. Malone.

15 MS. MALONE: Three things, Your Honor:  
16 That last thing is not what the testimony was. What  
17 Mr. Wyatt testified was, that's how their dialer  
18 worked, was for them to push a button and it would  
19 automatically call.

20 I specifically asked him, what is a manual  
21 call mean? And he said they actually dial the phone  
22 number into the phone, and that was his testimony.  
23 There has been nothing offered contrary.

24 Secondly, Your Honor, the FCC ruling,  
25 which I know we have cited in summary judgment and



1 everywhere else, actually said a predictive dialer  
2 can be an automatic telephone dialing system. It  
3 never said, all predictive dialers are automatic  
4 telephone dialing systems for purposes of the TCPA.

5 I'm an Irish girl; I'm also American. Not  
6 all Irish girls are Irish-American. Those two  
7 things cannot necessarily be the same. That's basic  
8 logic that we did in school.

9 The other thing is, there is a case  
10 directly on point in this issue that we put in  
11 summary judgment. It's the Satterfield case, Your  
12 Honor, if you would like the cite I will pull it.

13 THE COURT: I have it.

14 MS. MALONE: That case specifically talked  
15 about the obligation of the plaintiff to establish  
16 that the dialing system meets the automatic  
17 telephone dialing system definition under the TCPA  
18 looking at the FCC problem.

19 So there is actually no evidence to that.  
20 And in fact, Satterfield, if I recall correctly,  
21 even talked about the need of bringing expert  
22 testimony in on the part of the parties to establish  
23 what the technology of the system was.

24 Mr. Radbil certainly knows that case.  
25 It's been around for a long time. He had the option

1 of doing that and chose not to.

2 THE COURT: Your second point.

3 MS. MALONE: You know what? I ran them  
4 together, Judge.

5 Oh, Judge, my second motion for directed  
6 verdict. Your Honor, I would also move for a  
7 directed verdict because I don't think there has  
8 been a proper cause for causation or damages. And  
9 that really kind of goes into my issue with my Rule  
10 37 motion.

11 And I apologize, Judge, I don't normally  
12 make these kinds of motions before the Court. In  
13 their answers to damages on request for disclosure,  
14 plaintiff actually said that they are claiming  
15 damages in the amount of \$1,500 and reserves the  
16 right to disclose any additional damages. In  
17 Mr. White's deposition, he testified that he had no  
18 out-of-pocket damages.

19 In answers to discovery, in actual damages  
20 they said none; they said there was no medical. In  
21 his deposition testimony, he also testified that he  
22 wasn't aware of any additional results.

23 We get to trial today, and suddenly I hear  
24 that he has \$40,000 in actual damages as a result of  
25 the loan. He has \$5,000 from a teaching assignment

1 that wasn't provided to us in addition to the issues  
2 about these counseling sessions that haven't gone  
3 where they were supposed to go.

4 Rule 37 unfortunately talks about what the  
5 Court should do when one party is trying to try the  
6 case by ambush. So I honestly would ask the Court  
7 for some instruction to the jury, either that they  
8 can't consider any of that as testimony or, better  
9 yet, not to submit actual damages at all, given the  
10 fact they tried to sandbag us, Judge.

11 THE COURT: The information that you have  
12 via discovery, pretrial requests with regard to  
13 damages, remind where this is and exactly what the  
14 amount is?

15 MS. MALONE: Sure. Your Honor, the first  
16 place it appears is in their initial disclosures.  
17 Their answer was: Plaintiff claims actual damages  
18 in the amount of \$1,500 but reserves the right to  
19 disclose any additional damages suffered should they  
20 become known.

21 That was never supplemented, obviously.

22 MR. RADBIL: What about our pretrial --

23 THE COURT: Mr. Radbil, you will get your  
24 chance. Go ahead.

25 MS. MALONE: In their late-filed

1 January 2013 supplements, the only thing they  
2 supplemented were witness names. They did not  
3 change that answer, Your Honor.

4 And in Mr. White's deposition I asked him  
5 specifically regarding out-of-pocket expenses. His  
6 answer was, "None." Today he testified \$5,000 for  
7 losing a teaching assignment, plus 40,000 in costs  
8 related to this loan modification and some other  
9 things we hadn't heard about before.

10 Judge, I just -- I have never seen this,  
11 and I really don't make Rule 37 motions like this,  
12 but honestly, I'm a little frustrated here.

13 THE COURT: Okay. Thank you. Mr. Radbil.

14 MR. RADBIL: I may be young, Your Honor,  
15 but I don't litigate in bad faith.

16 THE COURT: That's a little questionable,  
17 to be honest with you at this point. Go ahead.

18 MR. RADBIL: I do not. And in our  
19 supplemental disclosures, our pretrial disclosures,  
20 we have amended that. I believe with respect to the  
21 charges that Mr. White incurred, he incurred those  
22 after the deposition.

23 THE COURT: Where are the submissions that  
24 give them notice of the amount of damages that you  
25 are seeking outside of the initial response that

1 Ms. Malone referred to? Where are they disclosed?

2 MR. RADBIL: In the pretrial order. They  
3 were disclosed at the mediated settlement  
4 conference.

5 THE COURT: Okay. Well, you know better  
6 than that. You know -- the federal rules require  
7 you to respond to questions about damages so that  
8 they can meet your proof at trial. So the fact that  
9 you discussed it in mediation doesn't count.

10 MR. RADBIL: Okay.

11 THE COURT: And you know that. And so the  
12 pretrial order --

13 MR. RADBIL: Pretrial disclosures.

14 THE COURT: The pretrial disclosures,  
15 okay. Show me where and what page and where those  
16 would be.

17 MR. RADBIL: I believe we copied and  
18 pasted from the pretrial order. I don't know if I  
19 have a copy of our pretrial disclosures with me.

20 THE COURT: Ms. Malone, do you have those?

21 MS. MALONE: Yes, ma'am, I sure do.

22 THE COURT: Thank you.

23 Mr. Radbil, take a seat. Let me hear what  
24 she has to say.

25 MS. MALONE: Your Honor, just so you know,

1 the first entry under tab 6 is his original  
2 disclosures. I apologize for the highlighting.

3 And the second one behind the yellow sheet  
4 is his supplemental.

5 THE COURT: And they are not in there?

6 MS. MALONE: They are.

7 THE COURT: As far as --

8 MS. MALONE: The references to the damages  
9 is not included in the supplemental.

10 THE COURT: Mr. Radbil?

11 MR. RADBIL: I don't know what document --

12 THE COURT: Okay. Let's have you take a  
13 look at it.

14 MR. RADBIL: Defendant's wrongful conduct  
15 caused the plaintiff to suffer legitimate actual  
16 damages. Plaintiff's actual damages not only  
17 include out-of-pocket expenses but also damages for  
18 personal humiliation --

19 THE COURT: What exactly are you reading  
20 from?

21 MR. RADBIL: Defendant's APP018, document  
22 76-1.

23 THE COURT: I guess my question is, where  
24 is it in there that talks about this amount of money  
25 above the \$1,500 that you initially disclosed. And

1 I think it would be better if you went back to the  
2 microphone.

3 MR. RADBIL: It's not quantified.

4 THE COURT: So they weren't on notice of  
5 the amounts that you have come up with here during  
6 the testimony at trial.

7 MR. RADBIL: Through our settlement  
8 negotiations.

9 THE COURT: Okay.

10 MR. RADBIL: And --

11 THE COURT: I'm sorry, Doctor, that you've  
12 had to have this kind of representation. And I  
13 don't recall ever saying that ever in court in 30  
14 years that I have been here. This is extremely,  
15 once again, disingenuous.

16 Go ahead. What else? Where else?

17 MR. RADBIL: Certainly not here.

18 THE COURT: So you agree that the amounts  
19 that were talked about were never specifically  
20 disclosed.

21 MR. RADBIL: I don't know the definitive  
22 answer, but I know that we have supplemented and  
23 they have been on notice of a significant amount of  
24 actual damage for a long time.

25 THE COURT: By virtue of what?

1 MR. RADBIL: I don't have all of our  
2 discovery responses.

3 THE COURT: You can't tell me off the top  
4 of your head where you might have disclosed the  
5 specific amount beyond the \$1,500?

6 MR. RADBIL: A specific amount? I don't  
7 know whether we did disclose a specific amount.

8 THE COURT: I've heard enough.  
9 Anything else?

10 MR. RADBIL: There's a requirement to  
11 disclose the exact amount of the damages that we're  
12 seeking?

13 THE COURT: What is your position on that?

14 MR. RADBIL: That the damages --

15 THE COURT: You have a federal practice,  
16 is that what you say?

17 MR. RADBIL: I'm sorry?

18 THE COURT: You have a federal practice,  
19 and you don't know the answer to that question?

20 MR. RADBIL: He's seeking damages --

21 THE COURT: How about a straight answer?

22 MR. RADBIL: -- for mental anguish and  
23 emotional distress.

24 THE COURT: How about a straight answer?  
25 You don't know the answer to that question?



1 MR. RADBIL: That is a straight answer to  
2 the question.

3 THE COURT: That you have no obligation to  
4 quantify your damages in federal practice when asked  
5 in discovery and even by virtue of the disclosure  
6 requirement. You're saying that you don't know if  
7 that's a requirement. You don't know that that's a  
8 requirement. That's what you have said. Am I  
9 right?

10 MR. RADBIL: That's a question for -- the  
11 jury determines the actual amount of damages.

12 THE COURT: Mr. Radbil, I have never heard  
13 more prevarication in my life. Have a seat. Have a  
14 seat.

15 There are some causes of action the  
16 plaintiff has prevailed on here. At this point, if  
17 there's any possibility of settling, I would  
18 strongly urge that to occur, given everything that's  
19 happened from Mr. Radbil.

20 If that's not possible, we're going to go  
21 to the jury tomorrow. I'm going to rule on this  
22 motion tomorrow on the Rule 37. I'm going to take  
23 some time on that, and it's serious, but that's  
24 something that I will be looking at.

25 If there is a settlement, then we can

1 resolve this case and move ahead and hopefully have  
2 this whole thing behind all of us. If that's not  
3 going to happen, then we will go ahead with all of  
4 this.

5 I'm going to have the jury in at ten, and  
6 if the case isn't settled, I want the lawyers here  
7 by 8:00 and I want some proposed jury instructions.  
8 Right now I can't tell you exactly what my ruling is  
9 going to be on the motion with regard to the  
10 automatic -- the Texas Act.

11 So be prepared on that. But I need  
12 something a little bit more than what I have right  
13 now. The Court, under Rule 49 of the Federal Rules  
14 of Civil Procedure, has an option to use general  
15 verdict forms or special. In this court's practice  
16 and in my understanding mostly is to use the general  
17 verdict, and that's what we're going to do.

18 So I will be looking for you all at 8:00  
19 tomorrow. The jury will be here at ten. If there  
20 is nothing else we will be in recess.

21 (The proceedings concluded at 5:56 p.m.)  
22  
23  
24  
25

C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify  
that the foregoing is a transcript from the record  
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees  
format comply with those prescribed by the Court and  
the Judicial Conference of the United States.

This 21st day of March 2013.

s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
Official Court Reporter  
The Northern District of Texas  
Dallas Division

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